

73 Am. Jur. 2d Support of Persons Summary

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

[Correlation Table](#)

Summary

Scope:

This article treats the general principles of law governing agreements for the support of persons, including the remedies available in the case of nonperformance or breach of such an agreement, and the practice and procedural issues involved in connection with the enforcement of such remedies.

Treated Elsewhere:

Advancements for the support of a child, see [Am. Jur. 2d, Advancements § 74](#)

Criminal offense of abandonment, desertion, or nonsupport, see [Am. Jur. 2d, Desertion and Nonsupport §§ 3 to 70](#)

Divorce and separation, allowances of support in cases of, see [Am. Jur. 2d, Divorce and Separation §§ 571 to 846, 916 to 1027](#)

Husband and wife, duty of support between, see [Am. Jur. 2d, Husband and Wife §§ 146 to 153](#)

Illegitimate children, support of, see [Am. Jur. 2d, Illegitimate Children §§ 90 to 97](#)

Parent and child, duty of support between, see [Am. Jur. 2d, Parent and Child §§ 42 to 69](#)

Provisions in wills for support and maintenance, see [Am. Jur. 2d, Wills §§ 1346 to 1350](#)

Spendthrift trusts, see [Am. Jur. 2d, Trusts §§ 94 to 127](#)

Support of ward by guardian, see [Am. Jur. 2d, Guardian and Ward §§ 95 to 98](#)

Uniform acts and similar laws for the interjurisdictional enforcement of support obligations, see [Am. Jur. 2d, Desertion and Nonsupport §§ 71 to 83](#)

Research References:

Westlaw Databases

[West's A.L.R. Digest \(ALRDIGEST\)](#)
[American Jurisprudence 2d \(AMJUR\)](#)
[American Law Reports \(ALR\)](#)
[Federal Procedure \(FEDPROC\)](#)
[Federal Procedural Forms \(FEDPROF\)](#)
[American Jurisprudence Legal Forms 2d \(AMJUR-LF\)](#)
[American Jurisprudence Pleading and Practice Forms Annotated \(AMJUR-PP\)](#)
[American Jurisprudence Proof of Facts \(AMJUR-POF\)](#)
[American Jurisprudence Trials \(AMJUR-TRIALS\)](#)
[United States Code Annotated \(USCA\)](#)
[Code of Federal Regulations \(CFR\)](#)
[Uniform Laws Annotated \(ULA\)](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

I. In General

[Topic Summary](#) | [Correlation Table](#)

Research References


West's Key Number Digest


West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, Deeds  17(4)

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#)  191

West's A.L.R. Digest, Deeds  17(4)

Trial Strategy

[Modification of Spousal Support on Ground of Supported Spouse's Cohabitation, 6 Am. Jur. Proof of Facts 3d 765](#)

[Terms of Oral Contract with Decedent, 39 Am. Jur. Proof of Facts 2d 91](#)

Forms

[Am. Jur. Legal Forms 2d §§ 243:4, 243:6](#)

[Am. Jur. Pleading and Practice Forms, Support of Persons § 4](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 1

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

I. In General

§ 1. Definitions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

A.L.R. Library

"Palimony" Actions for Support Following Termination of Nonmarital Relationships, 21 A.L.R.6th 351

Validity and construction of contract under which applicant for admission to home for aged or infirm turns over his property to institution in return for lifetime care, 44 A.L.R.3d 1174

Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166

Trial Strategy

Modification of Spousal Support on Ground of Supported Spouse's Cohabitation, 6 Am. Jur. Proof of Facts 3d 765

Forms

Am. Jur. Legal Forms 2d § 243:4 (Form drafting guide—Checklist—Matters to be considered when drafting agreement for support)

As far as the law of support of persons goes, the terms "maintenance," "support," and similar terms have significant meaning and must be carefully analyzed.¹ Additionally, the words "support" and "maintenance" are used synonymously with shelter² and in some cases, medicines, medical care, nursing care, funeral services,³ and reasonable personal care, as well as the courtesies and kindness usually found between individuals that have familial blood ties, have a significant meaning in this body of law.⁴ Similarly, the term to "take care of" includes the furnishing of meals and board, washing and mending, and providing care and attention in sickness⁵ as do the terms "warmth in the wintertime, and cool in the summer" and "proper assistance when she needed it."⁶ The concept of the word "home" under an agreement to provide another with a "home" has been said to include more than lodging and food as it embraces a personal family relationship conducive to material and spiritual well-being, as well as courteous and respectful treatment, in order to insure at least a modicum of security and comfort.⁷ A "support deed" is the instrument by which the parties execute and deliver consideration for future support and maintenance.⁸

Practice Tip:

The law of support of persons has as one of its goals the protection of the aged, weak, or afflicted who have improvidently executed conveyances of property based upon a promise of support.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Cromwell v. Converse](#), 108 Conn. 412, 143 A. 416, 61 A.L.R. 663 (1928); [Walls v. Savage](#), 243 Ga. 198, 253 S.E.2d 183 (1979) (holding the term "care and support" have a specific meaning in the context of care for an elderly person for lifetime).
- 2 As to the element of consideration to support a contract for the support of persons, see § 5.
- 3 The term "to make all necessary repairs," a phrase to be given a reasonable construction, does not mean to make every conceivable repair but rather, those which are reasonably necessary under the circumstances with due regard being given to such things as the condition of the property. [Blanchard v. Knights](#), 121 Vt. 29, 146 A.2d 173 (1958).
- 4 [McKnight v. McKnight](#), 212 Mich. 318, 180 N.W. 437 (1920).
- 5 As to the inclusion of medical care and funeral expenses as to the grantee's obligations for support, see § 12.
- 6 [Dumas v. Dumas](#), 84 Ga. App. 265, 66 S.E.2d 129 (1951); [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).
- 7 [Broz v. Hegwood](#), 349 Mo. 920, 163 S.W.2d 1009 (1942).
- 8 [Stewart v. Dickerson](#), 455 So. 2d 809 (Ala. 1984).

Likewise, the term "necessities of life" is commonly understood to mean food, drink, clothing, shelter, medical attention, and a suitable place of residence, and it also extends to articles which would ordinarily be necessary and suitable in view of the rank, position, fortune, earning capacity, and mode of living of the individual involved. [Richards v. Taylor](#), 926 S.W.2d 569 (Tenn. Ct. App. 1996).

7 [Brinkley v. Patton](#), 1944 OK 29, 194 Okla. 244, 149 P.2d 261 (1944); [Payne v. Winters](#), 366 Pa. 299, 77 A.2d 407 (1951).

8 [Euin v. Faubus](#), 217 Ark. 238, 229 S.W.2d 244 (1950).

9 [Stewart v. Dickerson](#), 455 So. 2d 809 (Ala. 1984) (indicating purpose of Alabama statute designed to allow grantors to void conveyances given in exchange for a promise of support).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 2

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

I. In General

§ 2. Nature of contract

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 17(4)

A.L.R. Library

[Enforceability of contract to make will in return for services, by one who continues performance after death of person originally undertaking to serve, 84 A.L.R.3d 930](#)

Trial Strategy

[Terms of Oral Contract with Decedent, 39 Am. Jur. Proof of Facts 2d 91](#)

Forms

[Am. Jur. Legal Forms 2d § 243:6](#) (Agreement to furnish support—Between party providing support and party receiving support—General form)

Am. Jur. Pleading and Practice Forms, Support of Persons § 4 (Complaint, petition or declaration—Against grantee of property conveyed in consideration for support agreement—Cancellation of deed—Misrepresentation by grantee to aged and disabled grantor)

Frequently, in cases involving a contract for the support of persons a deed is given in consideration of the promise of support and such instruments or contracts are enforceable.¹ This form of deed is distinguishable from an ordinary deed of bargain and sale since the grantor gives up his or her property for the consideration of future support which a court of equity cannot compel the grantee to furnish and a court of law cannot always make good with damages.² For example, as some courts have noted that although generally speaking a deed which is otherwise valid may not be revoked, where a deed is given in consideration of support and maintenance where a family relationship exists, the grantee's failure or refusal to provide support in accordance with the promise may permit the court to cancel or rescind the deed on equitable terms.³ Similarly, a conveyance in consideration of a promise to support the grantor is treated differently from an ordinary commercial transaction, and the rules and principles of law applicable to the former are not applicable to the latter.⁴ Thus, deeds given in exchange for promises of support are valid.⁵

Aside from memorializing an agreement through a deed, parties may enter into a contract to provide for the support of another in exchange for some consideration; such agreements are deemed to be executory contracts.⁶ A contract for the support of persons is not a contract of insurance⁷ although it is akin to an annuity.⁸

Beyond the implications of the terms of a deed or contract in some jurisdictions statutory provisions may also have application as to the terms of the support agreement.⁹ In the case of a statute permitting a grantor to void or annul a deed given to one agreeing to support a grantor for life as part of consideration for the conveyance of property, such a statute has been held constitutional and not violative of a grantee's due process rights.¹⁰ Furthermore, statutes affecting the law relating to support of persons have been deemed a competent exercise of a state's police powers.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Robitaille v. Robitaille](#), 34 Mass. App. Ct. 947, 613 N.E.2d 933 (1993).
As to the requisites for a valid contract for support, see § 3.
- 2 [Russell v. Robbins](#), 247 Ill. 510, 93 N.E. 324 (1910); [Whitney v. Combe](#), 151 Neb. 401, 37 N.W.2d 613 (1949).
- 3 [Citizens Trust Co. v. Metzger](#), 76 Pa. D. & C. 421, 1951 WL 3687 (C.P. 1951).
- 4 [State ex rel. Dept. of Highways v. Lo Bue](#), 83 Nev. 221, 427 P.2d 639 (1967).
- 5 [Thomas v. Garrett](#), 265 Ga. 395, 456 S.E.2d 573 (1995); [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996).
"Support deeds," by which property is granted in exchange for a promise by the grantee to care for the grantor for life, are valid in Arkansas. [Gilbert ex rel. Roberts v. Rainey](#), 77 Ark. App. 44, 71 S.W.3d 66 (2002).
- 6 [Citizens Trust Co. v. Metzger](#), 76 Pa. D. & C. 421, 1951 WL 3687 (C.P. 1951).
- 7 [Sisters of Third Order of St. Francis v. Guillaume's Estate](#), 222 Ill. App. 543, 1921 WL 1875 (2d Dist. 1921), cert. denied.
- 8 [Dalton v. Florence Home for Aged](#), 154 Neb. 735, 49 N.W.2d 595 (1951).
- 9 [In re Fillion](#), 181 F.3d 859 (7th Cir. 1999) (applying Wisconsin law and discussing statute which provided that a gift of property from an elderly parent to his or her child in exchange for a promise of support is presumptively improvident and may be rescinded).

- 10 [Bush v. Greer, 235 Ala. 56, 177 So. 341 \(1937\).](#)
- 11 [McAdory v. Jones, 260 Ala. 547, 71 So. 2d 526 \(1954\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons II Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

II. Formation and Requisites of Contract

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑53
West's Key Number Digest, Deeds 🔑17(4)
West's Key Number Digest, [Frauds, Statute of](#) 🔑74

A.L.R. Library

A.L.R. Index, Support of Persons
West's A.L.R. Digest, [Contracts](#) 🔑53
West's A.L.R. Digest, Deeds 🔑17(4)
West's A.L.R. Digest, [Frauds, Statute of](#) 🔑74

Forms

[Am. Jur. Legal Forms 2d § 243:6, 243:9, 243:12, 243:14, 243:16](#)
[Am. Jur. Pleading and Practice Forms, Support of Persons § 19](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 3

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

II. Formation and Requisites of Contract

§ 3. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 17(4)

A.L.R. Library

[Sufficiency of delivery of deed where grantor retains, or recovers, physical possession, 87 A.L.R.2d 787](#)

[Commitment of grantor to institution for insane as ground for setting aside conveyance in consideration of support, 18 A.L.R.2d 906](#)

A contract for support may be express¹ or implied either in fact² or implied in law.³ Furthermore, an express contract for support may be written⁴ or oral.⁵

To be binding, the agreement must be made by parties who are of legal age⁶ and mentally competent to enter into contracts,⁷ and the parties must express their mutual assent thereto.⁸ Such assent is usually expressed by an offer and acceptance although proof of an express offer and a definite acceptance is not necessary where the facts and circumstances show that both the party undertaking to furnish the necessities and the one receiving them expected, understood, and intended that compensation should be paid therefor.⁹

Where a deed to property is given in consideration of an agreement by the grantee to support the grantor or other designated person, the deed becomes binding upon the grantee by his or her acceptance of it, whether such agreement is contained in the instrument or not, and whether it is oral or reduced to writing.¹⁰ The delivery of a deed conveying land in consideration of the grantee's undertaking to support the grantor is sufficient to pass title to the property.¹¹ No particular form or ceremony is necessary to constitute delivery of a deed, but anything which clearly manifests the intention of the grantor and the person to

whom it is delivered that the deed shall presently become operative and effectual, that the grantor loses all control over it, and that the grantee is to become possessed of the estate constitutes a sufficient delivery.¹² In some jurisdictions there is a rebuttable presumption that a deed was delivered and accepted as of its date.¹³ The simplest mode of delivering a deed is by manual transfer by the grantor to the grantee.¹⁴

A contract to support a person will not be unenforceable simply because the amount to be paid is not fixed by the terms of the agreement,¹⁵ and the obligation to support a person may be made to depend upon a condition, such as future sickness or inability to work.¹⁶

Although it is not necessary to have a deed conveying property to another in consideration of the support of the grantor recorded in order to convey title to the grantee,¹⁷ where such a deed is recorded, it thereby becomes a notice to creditors of, and purchasers from, the grantee that the primary liability of the land is the maintenance and support of the grantor, and such a lien is paramount to the rights of any creditor or purchaser.¹⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Hesselgrave v. Mott](#), 23 Wash. 2d 270, 160 P.2d 521 (1945).
- 2 [Thomas v. Garrett](#), 265 Ga. 395, 456 S.E.2d 573 (1995).
- 3 [Thompson v. Hunter's Ex'r](#), 269 S.W.2d 266 (Ky. 1954) (holding a contract implied in law exists where neither the words nor conduct of a party are promissory in form or justify any inference of a promise but the law imposes an enforceable obligation, without mutual assent, for the purpose of affording a remedy where equity and good conscience require as such).
- 4 [Application of Mach](#), 71 S.D. 460, 25 N.W.2d 881 (1947).
- 5 [In re Fillion](#), 181 F.3d 859 (7th Cir. 1999) (applying Wisconsin law); [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995).
- 6 [Parsons v. Teller](#), 188 N.Y. 318, 80 N.E. 930 (1907).
- 7 [Rose v. Dunn](#), 284 Ark. 42, 679 S.W.2d 180 (1984) (holding deed given by an 89-year-old man conveying a 160-acre farm to two neighbors in exchange for \$1 and their promise to provide a home for the grantor until a medical determination of his need for nursing home care was made was not invalid because the grantor was competent and the conveyance was voluntary and the grantor actually received the support and the care promised for two years); [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
- 8 [Ottenberg v. Ottenberg](#), 194 F. Supp. 98 (D. D.C. 1961).
- 9 [Victor's Ex'r v. Monson](#), 283 S.W.2d 175 (Ky. 1955).
- 10 [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996).
- 11 [Dwyer v. Adler](#), 251 A.D.2d 535, 673 N.Y.S.2d 925 (2d Dep't 1998); [Hesselgrave v. Mott](#), 23 Wash. 2d 270, 160 P.2d 521 (1945).
- 12 [Pass v. Stephens](#), 22 Ariz. 461, 198 P. 712 (1921).
- 13 [Whalen v. Harvey](#), 235 A.D.2d 792, 653 N.Y.S.2d 159 (3d Dep't 1997) (transference of farm in exchange of lifetime care).
- 14 [Pass v. Stephens](#), 22 Ariz. 461, 198 P. 712 (1921).
- 15 [Bonesteel v. White](#), 127 Kan. 843, 275 P. 163 (1929).
- 16 [Webster v. Cadwallader](#), 133 Ky. 500, 118 S.W. 327 (1909).
- 17 [Hesselgrave v. Mott](#), 23 Wash. 2d 270, 160 P.2d 521 (1945).
- 18 [Federal Land Bank of Louisville v. Luckenbill](#), 213 Ind. 616, 13 N.E.2d 531 (1938).

73 Am. Jur. 2d Support of Persons § 4

American Jurisprudence, Second Edition | May 2021 Update


Support of Persons
Karon J. Powell, J.D.

II. Formation and Requisites of Contract

§ 4. Oral contract; statute of frauds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Frauds, Statute of](#)  74

A.L.R. Library

[Contract to support, maintain, or educate a child as within provision of statute of frauds relating to contracts not to be performed within a year, 49 A.L.R.2d 1293](#)

Forms

[Am. Jur. Legal Forms 2d § 243:6](#) (Agreement to furnish support—Between party providing support and party receiving support—Short form)

[Am. Jur. Pleading and Practice Forms, Support of Persons § 19](#) (Instruction to jury—Right to recover in quantum meruit for services rendered under oral support agreement)

Contracts for the support of persons, even though they are made orally, are enforceable and do not offend the statute of frauds requiring contracts which cannot be performed within a year to be in writing inasmuch as such contracts are terminable upon the death of the person to be supported which may happen within a year.¹ This is the rule even though the parties may have intended and thought it probable that it would extend over a longer period and it in fact extended over that period.² Consequently, an oral contract for support will be enforced even though the agreement may have been to provide support for life³ or for a stated

period longer than a year⁴ or for an indefinite or unspecified period.⁵ Thus, a contract to support a child until he or she reaches a certain age, which is beyond the period of one year, is not within the statute, and hence, it is enforceable.⁶ Additionally, where there has been partial performance on the part of one of the parties to the oral agreement for support, such performance takes the contract outside the provisions of the statute of frauds.⁷

Under some statutes requiring "an agreement which by its terms is not to be performed during the lifetime of the promisor" to be in writing, a promise by a person to pay a lump sum in consideration of his or her support for life, without fixing the time of payment, is within the statute because no liability on the part of the promisor to make payment can accrue while he or she is alive, that is, before the contract has been completely performed by the other party, and therefore, his or her promise is not to be performed by him or her within his or her lifetime.⁸ If the agreement must be in writing to escape the statute, a tape recording does not constitute a sufficient writing.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Thurston v. Nutter](#), 125 Me. 411, 134 A. 506, 47 A.L.R. 1156 (1926); [Gasch v. Compton](#), 36 Wash. 2d 782, 220 P.2d 331 (1950).
As to the statute of frauds relating to contracts for the support of persons, generally, see [Am. Jur. 2d, Statute of Frauds](#) §§ 430 to 436.
- 2 [Duncan v. Clarke](#), 308 N.Y. 282, 125 N.E.2d 569, 49 A.L.R.2d 1287 (1955).
- 3 [Leonard v. Rose](#), 65 Cal. 2d 589, 55 Cal. Rptr. 916, 422 P.2d 604 (1967).
- 4 [Glasgow v. Peatross](#), 201 Va. 43, 109 S.E.2d 135 (1959).
- 5 [Leonard v. Rose](#), 65 Cal. 2d 589, 55 Cal. Rptr. 916, 422 P.2d 604 (1967); [Gasch v. Compton](#), 36 Wash. 2d 782, 220 P.2d 331 (1950).
- 6 [Duncan v. Clarke](#), 308 N.Y. 282, 125 N.E.2d 569, 49 A.L.R.2d 1287 (1955).
- 7 [Robinson v. Hayes' Estate](#), 207 A.D. 718, 202 N.Y.S. 732 (3d Dep't 1924), *aff'd*, 239 N.Y. 512, 147 N.E. 175 (1924).
- 8 [Hagan v. McNary](#), 170 Cal. 141, 148 P. 937 (1915); [Sonders v. Roosevelt](#), 64 N.Y.2d 869, 487 N.Y.S.2d 551, 476 N.E.2d 996 (1985).
- 9 [Sonders v. Roosevelt](#), 64 N.Y.2d 869, 487 N.Y.S.2d 551, 476 N.E.2d 996 (1985).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 5

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

II. Formation and Requisites of Contract

§ 5. Consideration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  53

A.L.R. Library

[Moral or Natural Obligation as Consideration for Contract, 98 A.L.R.5th 353](#)

Forms

[Am. Jur. Legal Forms 2d § 243:12](#) (Periodic payments as consideration)

[Am. Jur. Legal Forms 2d § 243:14](#) (Agreement to provide in will for bequest of all property as consideration for support)

[Am. Jur. Legal Forms 2d § 243:16](#) (Transfer of interest in estate of parent's deceased spouse as consideration)

To be enforceable, an agreement for support must be based on a sufficient consideration¹ and generally, the consideration given for a contract of support is real or personal property of the person to be supported and it is usually stated that the agreement for support is the consideration for the conveyance of such property.² A benefit to the promisor is a sufficient consideration for a promise to furnish support.³ A detriment to the promisee, who relies upon a promise to be provided with support, is also a sufficient consideration for a contract to furnish such support.⁴ A release from a legal contract is also a sufficient consideration for a promise to furnish support.⁵

In the absence of statute,⁶ a moral obligation unconnected with legal liability or detriment to the promisee in reliance upon the promise has been held insufficient as a consideration for an executory promise by one person to pay for past, or to provide for future, support of a relative or other third person.⁷ Furthermore, although an equitable consideration founded on mere love or affection or gratuity will support an executed contract, it will not support an action to enforce an executory contract to furnish support.⁸ Despite the foregoing, if the consideration for the transaction is missing or omitted by the parties the court has the ability to reform the deed to include the agreed upon consideration.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Ex parte Alexander](#), 806 So. 2d 1222 (Ala. 2001); [Rennolds v. Rennolds](#), 312 So. 2d 538 (Fla. Dist. Ct. App. 2d Dist. 1975); [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).
- 2 [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).
As to support as consideration itself, see § 6.
- 3 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995); [D— D. C— v. T— W—](#), 480 S.W.2d 474 (Tex. Civ. App. Amarillo 1972).
- 4 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995); [D— D. C— v. T— W—](#), 480 S.W.2d 474 (Tex. Civ. App. Amarillo 1972).
- 5 [Henderson v. Spratlen](#), 44 Colo. 278, 98 P. 14 (1908) (holding release from a promise of marriage is a sufficient consideration for a promise to support a woman whom the promisor has induced to submit to surgical operations which rendered her unable to support herself and unfit to marry).
- 6 [Worth v. Daniel](#), 1 Ga. App. 15, 57 S.E. 898 (1907).
- 7 [D— D. C— v. T— W—](#), 480 S.W.2d 474 (Tex. Civ. App. Amarillo 1972).
As one court noted, gratuitous efforts, however great and however commendable, cannot support a claim—either express or implied—for breach of a contract for support. [Estate of Boothby](#), 532 A.2d 1007 (Me. 1987).
- 8 [Parsons v. Teller](#), 188 N.Y. 318, 80 N.E. 930 (1907).
- 9 [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 6

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

II. Formation and Requisites of Contract

§ 6. Consideration—Support as consideration

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 17(4)

Forms

[Am. Jur. Legal Forms 2d § 243:9](#) (Agreement to furnish support—To Pay Nursing Home Expenses of Parent)

An agreement for the future support of another or of a designated third person,¹ wholly or in part,² is a valuable consideration for the transfer of real³ or personal property.⁴ Past support and maintenance furnished to the grantor is also a good consideration for his or her conveyance of property in favor of the person furnishing such support and maintenance.⁵

In determining whether an agreement to care for and support a grantor for the remainder of his or her life is an adequate and sufficient consideration to support a conveyance of property, the circumstances and conditions existing at the time when the contract is made are controlling, rather than subsequent and unforeseen events for which neither party to the contract is responsible.⁶ Even if the consideration for a deed is inadequate, the deed cannot be defeated in the absence of fraud, mistake, undue influence, or some other recognized equitable ground and still remains operational.⁷

Observation:

The court will consider—in determining whether or not a promise constituted sufficient consideration—the following factors; (1) whether there was an express promise of support, (2) whether the grantee permitted the grantor to reside in the home after the

conveyance, (3) whether the grantee had handled the grantor's business affairs prior to the conveyance, and (4) whether or not an understanding of the parties can be confirmed by fact witnesses.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995); [Rennolds v. Rennolds](#), 312 So. 2d 538 (Fla. Dist. Ct. App. 2d Dist. 1975).
- 2 [Radford v. Radford](#), 388 S.W.2d 33 (Mo. 1965).
- 3 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995); [Succession of Marcel](#), 421 So. 2d 411 (La. Ct. App. 1st Cir. 1982); [Baker v. Pattee](#), 684 P.2d 632 (Utah 1984).
- 4 [Kelsey v. Kelley](#), 63 Vt. 41, 22 A. 597 (1891).
- 5 [Guest v. Guest](#), 351 Ill. App. 148, 114 N.E.2d 326 (1st Dist. 1953).
Adequate consideration supported conveyance of warranty deed, in proceeding in which grantor's children sought to set aside deed; deed contained words "for and in consideration of the sum of \$10.00 and other good and valuable consideration," grantor and grantee were close friends for many years, and during grantor's illness, grantee readily accepted him into his home and became his primary caregiver. [Lancaster v. Boyd](#), 927 So. 2d 756 (Miss. Ct. App. 2005).
- 6 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995).
- 7 [Radford v. Radford](#), 388 S.W.2d 33 (Mo. 1965).
As to the effect of fraud and undue influence, see §§ 8, 9.
- 8 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons III Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

III. Validity of Contract

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑191

West's Key Number Digest, Deeds 🔑17(4), 211(3)

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#) 🔑191

West's A.L.R. Digest, Deeds 🔑17(4), 211(3)

Trial Strategy

[Proving the Property and Other Rights of Cohabitants and Domestic Partners, 95 Am. Jur. Proof of Facts 3d 1](#)

[Modification of Spousal Support on Ground of Supported Spouse's Cohabitation, 6 Am. Jur. Proof of Facts 3d 765](#)

Forms

[Am. Jur. Legal Forms 2d §§ 243:8, 243:14](#)

[Am. Jur. Pleading and Practice Forms, Support of Persons §§ 3, 8](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 7

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

III. Validity of Contract

§ 7. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

A.L.R. Library

["Palimony" Actions for Support Following Termination of Nonmarital Relationships](#), 21 A.L.R.6th 351

Trial Strategy

[Proving the Property and Other Rights of Cohabitants and Domestic Partners](#), 95 Am. Jur. Proof of Facts 3d 1
[Modification of Spousal Support on Ground of Supported Spouse's Cohabitation](#), 6 Am. Jur. Proof of Facts 3d 765

Forms

[Am. Jur. Legal Forms 2d § 243:8](#) (Agreement to furnish support—Between parent and child—For room and board)

Contracts for support are generally regarded as valid if they have the basic contractual requisites¹ unless they contravene a statute or public policy.² In some jurisdictions, statutes have been enacted providing that a conveyance of realty for which a material part of the consideration is the agreement of the grantee to support the grantor during his or her life is void at the grantor's option, if he or she brings proceedings in equity to annul it during his or her lifetime.³ An instrument disposing of the grantor's property to take effect upon his or her death and containing a covenant that the grantee should care for and maintain the grantor during their life is void if made in the form of a deed for the purpose of avoiding the statute of wills, but not if it is intended in good faith as a present disposition of the grantor's property and contains no terms indicating an intention to postpone its operation until the death of the grantor.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996); [Matter of Kittay](#), 118 A.D.2d 647, 500 N.Y.S.2d 6 (2d Dep't 1986) (holding that agreement for the support of persons, to be enforceable, must be specific to the form, frequency and amount of payment and cannot be too vague).
- 2 [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996); [Kovler v. Vagenheim](#), 333 Mass. 252, 130 N.E.2d 557 (1955); [Nelson v. Wilson](#), 97 S.W.2d 287 (Tex. Civ. App. Texarkana 1936), writ refused; [Cales v. Ford](#), 126 W. Va. 158, 28 S.E.2d 429, 150 A.L.R. 398 (1943). For a discussion of contracts which violate public policy and considerations thereto, see [Am. Jur. 2d, Contracts](#) §§ 237 to 245.
- 3 [Ex parte Alexander](#), 806 So. 2d 1222 (Ala. 2001).
- 4 [Pass v. Stephens](#), 22 Ariz. 461, 198 P. 712 (1921).
A transfer of stock by the owner to himself and another in joint tenancy as part of a general agreement by the latter to support the former for life and to pay his burial expenses is not void as an attempted testamentary disposition in violation of the statute of wills. [Strout v. Burgess](#), 144 Me. 263, 68 A.2d 241, 12 A.L.R.2d 939 (1949).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 8

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

III. Validity of Contract

§ 8. Fraud

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 211(3)

A.L.R. Library

[Validity and construction of contract under which applicant for admission to home for aged or infirm turns over his property to institution in return for lifetime care, 44 A.L.R.3d 1174](#)

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons § 3](#) (Complaint, petition or declaration—Against grantee of property conveyed in consideration for support agreement—Cancellation of deed—Fraud of grantees and promise of support)

Where the consideration for a conveyance is an agreement by the grantee to support the grantor during the remainder of his or her life and the grantee neglects or refuses to comply with the contract this raises a presumption that he or she did not intend to comply with it and therefore the contract is deemed fraudulent at its inception.¹ However, such a presumption will not lie where there has been continuous performance of the grantee's obligation for a long period of time,² or where the grantee complies with the contract up to the time of his or her death,³ or if the grantor prevents the grantee from carrying out the agreement.⁴ The brevity of the period of performance on account of the grantor's early death does not, by itself, make the consideration inadequate.⁵ However, the courts will consider circumstantial evidence including acts and declarations of the person in securing

the contract, as well as his or her subsequent conduct with respect to refusing to carry out his or her promises.⁶ Thus, a deed whereby a parent conveys real estate to his or her child in consideration of the child's promise of support and maintenance of the parent for life is not fraudulent per se.⁷

Observation:

In order to decide whether a contract for the support of persons was procured by fraud the court will consider the transaction as a whole, including the nature of the transaction, the extent of the consideration, the relationship and interests of the parties, the respective ages of the parties, the extent of the defendant's efforts to perform, as well as all other relevant circumstances.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Ex parte Alexander](#), 806 So. 2d 1222 (Ala. 2001); [Mitchell v. Mitchell](#), 231 Ark. 990, 333 S.W.2d 741 (1960); [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
- 2 [Brinkley v. Patton](#), 1944 OK 29, 194 Okla. 244, 149 P.2d 261 (1944) (more than 30 years).
- 3 [Ropacki v. Ropacki](#), 341 Ill. 301, 173 N.E. 376 (1930).
- 4 [Weaver v. Zimmer](#), 337 Ill. 498, 169 N.E. 328 (1929).
Consideration supported mother's conveyance of property to son in exchange for stated consideration of "five dollars and other love and consideration," which included lifetime agreement in which son agreed to care for mother and maintain residence; son had cared for mother and was her main source of transportation, although not to mother's satisfaction, and son's failure to continue to care for mother happened only when mother changed locks to residence. [Dixon v. Dixon](#), 362 S.C. 388, 608 S.E.2d 849 (2005).
- 5 [Boardman v. Lorentzen](#), 155 Wis. 566, 145 N.W. 750 (1914).
The basis for this rule is that events such as the early death of the grantor cannot enter into the fairness of the contract or the adequacy of the consideration since there is an element of uncertainty in this class of contracts and the adequacy of the consideration and the fairness of the contract must be viewed from the standpoint of the time of its making. [Dingler v. Ritzius](#), 42 Idaho 614, 247 P. 10, 49 A.L.R. 598 (1926).
- 6 [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
- 7 [Popovitch v. Kasperlik](#), 76 F. Supp. 233 (W.D. Pa. 1947).
- 8 [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 9

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

III. Validity of Contract

§ 9. Undue influence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 17(4)

A.L.R. Library

[Validity and construction of contract under which applicant for admission to home for aged or infirm turns over his property to institution in return for lifetime care, 44 A.L.R.3d 1174](#)

Forms

[Am. Jur. Legal Forms 2d § 243:14](#) (Agreement to provide in will for bequest of all property as consideration for support)
[Am. Jur. Pleading and Practice Forms, Support of Persons § 8](#) (Complaint, petition or declaration—To set aside transfer of property made in consideration of support agreement—By executor of transferor's estate—Undue influence)

A promise by the grantee of a deed of conveyance of property to care for and support the grantor does not, by itself, constitute undue influence,¹ and the fact that an aged and infirm person conveys his or her property in consideration of an agreement to support him or her does not give rise to a presumption of undue influence.² Additionally, the mere fact that the relationship of parent and child exists between the grantor and the grantee does not raise any presumption of undue influence.³ However, if it can be shown that the parties stand in a confidential relationship, some courts cast a presumption of undue influence which requires the party resisting the presumption to rebut it.⁴

In order to constitute undue influence, the defendant must act in such a way as to destroy the grantor's free agency at the time that the conveyance is executed and must, in effect, substitute the will of another for that of the grantor; and mere suspicion, conjecture, possibility, or a guess that undue influence has been exercised is not sufficient to defeat a conveyance which is otherwise valid.⁵ Additionally, mere advice, argument, or persuasion does not constitute undue influence if the grantor acts freely when executing the deed even though the deed would not have been executed but for the advice, argument, or persuasion.⁶

Practice Tip:

Among the relevant and significant circumstances in determining whether a deed conveying property in consideration of the grantee's promise to furnish support to the grantor is the result of undue influence are the situation of the grantor and his or her relation to others, his or her condition of health and its effect upon his or her body and mind, his or her dependence upon and subjection to the persons claimed to have influenced the grantee and their opportunity to wield such influence, and the haste in carrying through the conveyance.⁷ Furthermore, the burden which the grantee undertook is to be measured by the situation existing at the time of the transaction with its attendant possibilities and not by what subsequently transpired.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
Generally speaking, "undue influence" means the wrongful influence operating over a grantor when a deed is given such that the grantor lacked free agency. [Ropacki v. Ropacki](#), 341 Ill. 301, 173 N.E. 376 (1930).
- 2 [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
- 3 [Ropacki v. Ropacki](#), 341 Ill. 301, 173 N.E. 376 (1930) (conveyance by mother to son); [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
- 4 [Jones v. Boothe](#), 270 Ala. 420, 119 So. 2d 203 (1960).
Similarly, the courts view suspicious gifts or contracts between parties—as in the case of contracts pertaining to the support of persons—occupying a confidential relationship with an eye to closely scrutinizing them. [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
- 5 [Stenger v. Anderson](#), 66 Cal. 2d 970, 59 Cal. Rptr. 844, 429 P.2d 164 (1967).
One factor militating against an alleged destruction of one's free will is whether or not that party had obtained independent advice. [In re Carlson's Estates](#), 201 Kan. 635, 443 P.2d 339 (1968).
- 6 [Ropacki v. Ropacki](#), 341 Ill. 301, 173 N.E. 376 (1930).
- 7 [Collins v. Erdmann](#), 122 Conn. 626, 191 A. 521 (1937).
A grantor, despite suffering from a physical impairment, if mentally alert and being able to fully comprehend the nature of the transaction, will not succeed in alleging undue influence. [Whalen v. Harvey](#), 235 A.D.2d 792, 653 N.Y.S.2d 159 (3d Dep't 1997).
- 8 [Combs v. Bowen](#), 255 Ky. 802, 75 S.W.2d 513 (1934).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

A. In General

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑191

West's Key Number Digest, Deeds 🔑19

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#) 🔑191

West's A.L.R. Digest, Deeds 🔑19

Forms

[Am. Jur. Legal Forms 2d § 243:10](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 10

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

A. In General

§ 10. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  19

Forms

[Am. Jur. Legal Forms 2d § 243:10](#) (Bond to furnish support—Under agreement between provider of support and recipient of support)

The courts, with exception,¹ treat contracts for the support of persons as being in a class by themselves and such contracts are governed by different rules from those governing the construction of ordinary contracts.² For example, where realty is conveyed in consideration of future care and support reasonably strict and substantial compliance with the contract's terms are required and the character of the treatment, and the maintenance and attention given the grantor largely enters the question of the adequacy of fulfilling the condition which forms the consideration.³ Additionally, the fundamental rule of construction is to give effect to the intention of the parties executing the instrument and the intent is to be gleaned from the language used in the instrument. Thus every clause and even every word should be given meaning.⁴ In determining the parties' intent the courts also apply good sense and right reason to the facts.⁵ However, if the terms of the instrument are not clear collateral, evidence may be received to ascertain the intent of the parties.⁶ Where the agreement is ambiguous the court looks to the apparent purpose of the parties when entering into the contract, the history of the negotiations leading up to the contract, and the expressions of the parties or their agents as to their mutual understanding of the language of the agreement to the extent that such expressions are available or admissible.⁷ In performing such a task, the court should place itself in the same situation as the parties who

executed the contract so as to view the circumstances as the parties viewed them in order to properly judge the meaning of the words of the instrument.⁸

The rule that a contract includes not only what is expressly stated therein but also what is necessarily implied from the language used is applicable in contracts for support.⁹ Furthermore, where the contract is between close relatives, it should not be construed with the same nicety applicable to a contract between strangers.¹⁰ Strict compliance by the grantee of his or her undertaking to support the grantor will be required,¹¹ and a breach of the undertaking will not be tolerated by a refinement upon technical rules and principles of law.¹² If there is a doubt as to the place or manner of performance, the doubt will be resolved in favor of the grantor, and if the relief required is without exact precedent, the court can and will devise a remedy to fit the circumstances.¹³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Worthington v. Worthington](#), 207 Ark. 185, 179 S.W.2d 648 (1944).
- 2 [Gasch v. Compton](#), 36 Wash. 2d 782, 220 P.2d 331 (1950).
- 3 [Roberts v. Jiles' Ex'x](#), 307 S.W.2d 171 (Ky. 1957).
- 4 [Pass v. Stephens](#), 22 Ariz. 461, 198 P. 712 (1921).
- 5 [Ottenberg v. Ottenberg](#), 194 F. Supp. 98 (D. D.C. 1961).
- 6 [Thomas v. Garrett](#), 265 Ga. 395, 456 S.E.2d 573 (1995).
- 7 [Ottenberg v. Ottenberg](#), 194 F. Supp. 98 (D. D.C. 1961).
As to application of the parol evidence rule, see § 43.
- 8 [Haslinger v. Gabel](#), 344 Ill. 354, 176 N.E. 340 (1931).
- 9 [McGill v. Malo](#), 23 Conn. Supp. 447, 184 A.2d 517 (Super. Ct. 1962).
- 10 [Payne v. Winters](#), 366 Pa. 299, 77 A.2d 407 (1951).
- 11 [Cales v. Ford](#), 126 W. Va. 158, 28 S.E.2d 429, 150 A.L.R. 398 (1943).
- 12 [Dietz v. Dietz](#), 244 Minn. 330, 70 N.W.2d 281 (1955).
- 13 [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑191

West's Key Number Digest, Deeds 🔑19, 210

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#) 🔑191

West's A.L.R. Digest, Deeds 🔑19, 210

Forms

[Am. Jur. Legal Forms 2d §§ 243:7, 243:21, 243:22, 243:24, 243:25](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 11

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

§ 11. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  19, 210

Generally speaking, a contract for support and maintenance includes only such matters as were contemplated by the parties, and this is to be ascertained from the language used in the contract considered in the light of the circumstances of the parties at the time of the execution of the contract.¹ Thus, a contract to support, care for, and provide a home for another person imports not only board, lodging, clothing, care, and incidental expenses commensurate with the customary condition and walk in life of the person to be supported but also imports proper care, nursing, and medical attendance in sickness and a suitable burial at his or her death.² Similarly, an agreement to support, maintain, and provide and care for the grantor in consideration of a conveyance of his or her property to the grantee requires not only furnishing the necessary food and clothing but also a home suitable to the grantor's condition in life and one in which he or she may live in comfort.³ Moreover, in addition to physical necessities, the person to be supported is entitled to expect reasonable personal care and the courtesies and kindness usually obtaining between individuals that have the same ties of blood in families of a similar station as that of the contracting parties.⁴ The limits of amount and character of support, when they are not specified in the contract, are often determined according to the "station in life" rule, viewed as of the time when the contract was made.⁵

Since perfection is not required on the part of the party providing support,⁶ in determining whether or not the grantee or the person who was to have provided support satisfied his or her duty, some courts apply a "substantial performance" or "substantial compliance" test which asks whether the compliance was substantial in the quantitative sense when compared with the benefits the other party contracted for, whether the extent of performance meets the requirements of a reasonable person under comparable circumstances, what the party providing such services relinquishes in order to perform, and the indicia of good-faith efforts to fully perform the contract.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Sanderson v. Sanderson, 130 Tex. 264, 109 S.W.2d 744 (Comm'n App. 1937).
- 2 McKnight v. McKnight, 212 Mich. 318, 180 N.W. 437 (1920).
- 3 Fisher v. Sellers, 214 Ark. 635, 217 S.W.2d 331 (1949).
- 4 Strock v. MacNicholl, 196 Va. 734, 85 S.E.2d 263 (1955).
- 5 Dumas v. Dumas, 84 Ga. App. 265, 66 S.E.2d 129 (1951).
- 6 Craig v. Beach, 303 Ky. 516, 198 S.W.2d 220 (1946).
- 7 In re Estate of English, 691 S.W.2d 485 (Mo. Ct. App. W.D. 1985).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 12

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

§ 12. Medical care and funeral expenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  210

A.L.R. Library

[Measure and elements of damages recoverable for breach of contract to support person, 50 A.L.R.2d 613](#)

Forms

[Am. Jur. Legal Forms 2d § 243:22](#) (Child to discharge parent's current debts)

[Am. Jur. Legal Forms 2d § 243:21](#) (Child to assume certain debts and provide monthly allowance to parent)

Contracts for support have generally been interpreted to include medicines, medical services, and nursing care.¹ The grantee's obligation to pay such expenses may extend even to expenses incurred from care rendered out of the state where the performance was to take place so long as the expenses incurred do not exceed the cost of what was anticipated by the parties at the designated place of performance.²

Conversely, contracts to support a person for life have generally been construed not to include the payment of funeral expenses³ on the theory that such contracts terminate upon the death of the person to be supported and hence do not cover the period after such death.⁴ However, this rule may be affected by proof that it was the intention or agreement of the parties to include such funeral expenses.⁵ However, some courts have given a broad meaning to the term "support" so as to include funeral expenses even though no specific provision for such expenses was contained in the agreement.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [McKnight v. McKnight](#), 212 Mich. 318, 180 N.W. 437 (1920).
- 2 [Baber v. Hicks](#), 248 Ark. 1026, 455 S.W.2d 104 (1970).
- 3 Where the grantor's will directed her executor to pay her funeral expenses, and the grantor's estate was capable of paying such expenses, the grantee is not obliged to pay for funeral expenses. [Hardin v. Chapman](#), 36 Tenn. App. 343, 255 S.W.2d 707 (1952).
- 4 [Stryker v. Sands](#), 4 N.J. 182, 72 A.2d 175 (1950).
- 5 [Taylor v. Weller](#), 213 Md. 578, 132 A.2d 578 (1957) (funeral expenses specifically provided for in contract); The cost of monuments is part of the funeral expenses under a contract to furnish support and to pay funeral expenses. [Zullo v. Zullo](#), 142 Conn. 695, 117 A.2d 838 (1955).
- 6 [McKnight v. McKnight](#), 212 Mich. 318, 180 N.W. 437 (1920).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 13

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

§ 13. Personal performance of obligation

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  19

A.L.R. Library

[Enforceability of contract to make will in return for services, by one who continues performance after death of person originally undertaking to serve, 84 A.L.R.3d 930](#)

Forms

[Am. Jur. Legal Forms 2d § 243:24](#) (Retention of lien to secure performance)

[Am. Jur. Legal Forms 2d § 243:7](#) (Agreement to furnish support—Between two children for parent's support)

Although it is the general rule that contracts for support are personal and cannot be assigned without the consent of the obligee, this rule only refers to the nature of the obligation not to the extent to regulate the manner of how the performance is rendered as that is a matter which may be as varied as human desires, and it is determined solely by a proper construction of the terms of the agreement.¹ For example, if no specific place is specified at which the support is to be furnished, or there is no specific provision as to how the support is to be furnished, and no language is contained in the deed nor can an inference be drawn from the situation of the parties that would render it necessary that the support should be furnished only by the grantee, anyone who

is interested in the condition, or in the lands to which it relates, may perform it.² A stipulation in a deed that the "grantees shall provide" the grantor with all the reasonable necessities of life does not require the grantees' personal care and attention, but only requires that the grantees see to it that provisions are made for such necessities, and the grantees may pay others to furnish the same.³ The person obliged to provide support may also contract with a third person for the latter to furnish the necessities of life required by the obligee,⁴ or the obligor may assign the performance of his or her obligation to a third person.⁵

However, where the deed provides that the grantee should furnish the support to the grantor on the premises conveyed the performance of the obligation is personal and it cannot be performed by another without the grantor's consent.⁶ Similarly, there is a presumption that personal performance of the obligation by the grantee is required where an aged parent conveys their property to a son to secure support for themselves during the remainder of their life, whether the agreement calls for support generally or the payment of money or property in specific amounts at specified times.⁷ Nevertheless, a son may assign the performance of his obligation to one who is not a stranger in blood to the grantor, such as the grantee's brother or sister.⁸ Additionally, if the grantee predeceases the grantor, the grantee's heirs may continue to carry out the grantee's obligation to support the grantor.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Tough v. Netsch](#), 83 N.H. 374, 142 A. 702 (1928).
- 2 [Sutton v. Cornwell](#), 267 Ky. 346, 102 S.W.2d 25 (1936); [Biddle v. Johnsonbaugh](#), 444 Pa. Super. 450, 664 A.2d 159 (1995).
- 3 [Tough v. Netsch](#), 83 N.H. 374, 142 A. 702 (1928).
- 4 [Tough v. Netsch](#), 83 N.H. 374, 142 A. 702 (1928).
- 5 [Hurley v. McCallister](#), 19 S.D. 381, 103 N.W. 644 (1905).
Similarly, if a group of siblings capable of supporting the grantor deed property to another sibling and the grantee sibling dies the conveyance will not be voided as performance could have been rendered by the surviving siblings. [Cluck v. Mack](#), 278 Ark. 506, 647 S.W.2d 442 (1983) (holding deed by mother and three daughters to fourth daughter who was to care for mother was not subject to cancellation simply because of the fourth daughter's death).
- 6 [Pomerleau v. Pomerleau](#), 123 Me. 522, 124 A. 243 (1924).
As to the place of performance, see § 14.
- 7 [Huffman v. Rickets](#), 60 Ind. App. 526, 111 N.E. 322 (1916) (deed to son and daughter-in-law).
- 8 [Baugh v. Baugh](#), 157 Ky. 236, 162 S.W. 1118 (1914).
- 9 [Sutton v. Cornwell](#), 267 Ky. 346, 102 S.W.2d 25 (1936).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 14

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

§ 14. Place of performance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  19

Forms

[Am. Jur. Legal Forms 2d § 243:25](#) (Reservation of right to dwell on premises conveyed)

A person has a right—as it relates to a contract for support—to contract for the performance of the contract in a particular place.¹ The place where the support is to be furnished depends upon the intention of the parties, as well as the circumstances attendant to the transaction.² Where the place of performance is specified in the contract or it can be clearly inferred therefrom, that designation is decisive of the question and the obligor must furnish support at such a place and the obligee cannot designate a different place.³ If the parties cannot live together in friendly relations as contemplated in the agreement, the court may set aside the deed conveying property in consideration of such support⁴ or require that provisions be made for the care and maintenance of the grantor elsewhere at the expense of the grantee.⁵ If not specified, the place of performance may be implied from the value of the property conveyed, the condition in life and the expectations of the parties, and all the other relevant circumstances,⁶ and if there is doubt as to the place of performance, it will be resolved in favor of the person to be supported.⁷ Additionally, where the language of the instrument does not implicitly or expressly provide for the place of performance, the general rule is that the person entitled thereto may require the support to be furnished at a place he or she may select if it can be supplied there without the obligee incurring unreasonable expense.⁸ Where the person to be supported is an aged or infirm parent, the

courts have generally held that the obligation to furnish him or her care and support should be performed in the home, or within the family, of the child.⁹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Baber v. Hicks](#), 248 Ark. 1026, 455 S.W.2d 104 (1970).
- 2 [Disenroth v. Jennings](#), 344 Mich. 263, 73 N.W.2d 875 (1955).
- 3 [Corzine v. Keith](#), 384 Ill. 435, 51 N.E.2d 538 (1943); [Cummings v. Tolman](#), 292 Mass. 58, 197 N.E. 476, 101 A.L.R. 1457 (1935).
- 4 Following the sale of property from parents to their daughter, the court did not require the parents to vacate the premises where part of the consideration for the transfer was the daughter's promise of continued care for them. [Amoco Production Co. v. McMorris](#), 552 So. 2d 1255 (La. Ct. App. 1st Cir. 1989).
- 5 [McKnight v. McKnight](#), 212 Mich. 318, 180 N.W. 437 (1920).
- 6 [Russell v. Robbins](#), 247 Ill. 510, 93 N.E. 324 (1910).
- 7 [Blose v. Blose](#), 118 Va. 16, 86 S.E. 911 (1915).
For example, where the parties are in close blood relationship and the persons to be supported are younger members of the family the inference may be required that the intention of the grantor was that the younger should live with the older members of the family. [Cummings v. Tolman](#), 292 Mass. 58, 197 N.E. 476, 101 A.L.R. 1457 (1935).
- 8 [Soper v. Cisco](#), 85 N.J. Eq. 165, 95 A. 1016 (Ct. Err. & App. 1915); [McGillivray v. Peterson](#), 73 S.D. 266, 41 N.W.2d 832 (1950).
- 9 [Nowell v. Larrimore](#), 205 Md. 613, 109 A.2d 747 (1954).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 15

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

B. Extent, Amount, and Conditions of Support

§ 15. Duties of person to be supported

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  210

The person to be supported has a corresponding duty to respect the feelings of the person furnishing support and those of his or her family, and to conform as nearly as possible to the habits of their household.¹ Perfection is not required on the part of either party—substantial compliance will do.² Thus, where the grantor does not demean themselves in a proper manner while receiving support in the home of the grantee, as a consequence of which it becomes impossible for the grantee to allow the grantor to remain in the grantee's home, the grantor forfeits the right to require the grantee to continue providing support and the right to have the deed set aside.³ However, an isolated act of the grantor in accusing the grantee of improper conduct does not constitute a breach of the agreement so as to entitle the grantee to refuse to continue furnishing support to the grantor.⁴

A person receiving support and maintenance is under no duty to render personal services in consideration for the support and maintenance that he or she is to receive unless that obligation is imposed by the language of the contract or is clearly inferable therefrom upon a fair construction of the instrument and appraisal of the status and relations of the parties.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946).
- 2 [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946).
- 3 [Chamberlin v. Sanders](#), 268 Ill. 41, 108 N.E. 666 (1915).
- 4 [Evans v. Johnson](#), 295 Mich. 443, 295 N.W. 219 (1940).
- 5 [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

C. Performance or Breach of Obligation

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑191

West's Key Number Digest, Deeds 🔑19, 168

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#) 🔑191

West's A.L.R. Digest, Deeds 🔑19, 168

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons §§ 10, 15 to 17](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 16

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

C. Performance or Breach of Obligation

§ 16. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons § 10](#) (Petition or application—To punish for contempt—Failure to make support payments)

The question of what constitutes compliance by the obligor under a contract for support and maintenance is sometimes difficult to determine because in the nature of things, the line of demarcation between compliance and noncompliance is not clearly drawn.¹ However, some courts have attempted to draw a distinction as to the elements of performance, for example, by holding that an agreement to furnish a grantor a home, food, medicine, burial expenses, and all other necessities of life are severable, the mere furnishing of shelter alone is not performance.² In determining whether proper support has been furnished, the courts will consider the language employed in the contract, the subject matter, the condition in life of the parties, and the surrounding circumstances.³

Generally speaking, the obligee is entitled to the full measure of support provided for in the contract and anything less is technically a breach, and consequently, strict performance is required especially where the conveyance of property is made by an aged person.⁴ Partial support is not sufficient performance⁵ nor is perfection required—all that is needed is substantial compliance with the contract.⁶ Thus, a breach will only be declared where there has been an entire failure or refusal to perform and the failure or refusal must relate to a material issue in the contract.⁷ A breach has not occurred where there is no default⁸ and

in some case the default or breach—particularly in the case of providing kindness, personal care, and attention—must continue over a considerable period of time.⁹ Additionally, a mere assignment of performance will not necessarily result in the finding of a breach.¹⁰

Under an agreement for the conveyance of land in consideration of the support of the grantor by the grantee, there is a mutual duty of both the grantor and the grantee to accord each other kind personal treatment and to respect each other's feelings.¹¹ The mistreatment of the grantor by the grantee of such a character as to render the grantor's life intolerable, forcing the latter to leave the premises where support is to be furnished, constitutes a breach of the agreement,¹² and the fact that the grantee has subsequently invited the grantor to return does not relieve the grantee of his or her breach of contract and of the resulting damages.¹³ Where both parties are in pari delicto, the deed of conveyance will not be set aside.¹⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Dumas v. Dumas](#), 84 Ga. App. 265, 66 S.E.2d 129 (1951); [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).
- 2 [Dumas v. Dumas](#), 84 Ga. App. 265, 66 S.E.2d 129 (1951).
- 3 [Haslinger v. Gabel](#), 344 Ill. 354, 176 N.E. 340 (1931).
- 4 [Storey-Bracher Lumber Co. v. Burnett](#), 61 Or. 498, 123 P. 66 (1912).
- 5 [Corzine v. Keith](#), 384 Ill. 435, 51 N.E.2d 538 (1943).
- 6 [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946); [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).
- 7 [Bradecich v. Rivard](#), 411 Ill. 214, 103 N.E.2d 367 (1952).
- 8 [Shores v. Stout](#), 199 Va. 530, 100 S.E.2d 695 (1957).
- 9 [Wireman v. Wireman](#), 259 Ky. 120, 81 S.W.2d 908 (1935).
- 10 [Hesselgrave v. Mott](#), 23 Wash. 2d 270, 160 P.2d 521 (1945).
- 11 [Moore v. Bugg's Ex'r](#), 274 Ky. 135, 118 S.W.2d 185 (1938); [Strock v. MacNicholl](#), 196 Va. 734, 85 S.E.2d 263 (1955).
- 12 [McDowell v. Greenland](#), 259 S.W.2d 305 (Tex. Civ. App. Austin 1953), writ refused n.r.e.; [Gasch v. Compton](#), 36 Wash. 2d 782, 220 P.2d 331 (1950).
- 13 [McGill v. Malo](#), 23 Conn. Supp. 447, 184 A.2d 517 (Super. Ct. 1962).
- 14 [Moore v. Bugg's Ex'r](#), 274 Ky. 135, 118 S.W.2d 185 (1938).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 17

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

C. Performance or Breach of Obligation

§ 17. Excuses for nonperformance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  19, 168

A.L.R. Library

[Commitment of grantor to institution for insane as ground for setting aside conveyance in consideration of support, 18 A.L.R.2d 906](#)

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons §§ 15 to 17 \(Answer—Defense\)](#)

The person obliged to furnish support under a contract therefor may be excused from compliance therewith where such performance becomes impossible because of an act of God or of law.¹ Additional reasons excusing performance include abandonment of the place where support is to be rendered² and the temporary inability of the grantee, due to illness and hospitalization, to continue to care for and support the grantor.³ However, nonperformance will not be excused where nothing appears in the contract for support requiring the performance of an act which an ordinary person for hire could not perform.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Stocking, by Monteiro v. Hall](#), 81 R.I. 168, 100 A.2d 850 (1953) (obligee committed to insane asylum).
As to excuses for nonperformance under contracts, generally, see [Am. Jur. 2d, Contracts §§ 644 to 698](#).
- 2 [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946); [McGillivray v. Peterson](#), 73 S.D. 266, 41 N.W.2d 832 (1950).
- 3 [Taylor v. Weller](#), 213 Md. 578, 132 A.2d 578 (1957).
- 4 [In re Cornaz' Estate](#), 8 Cal. 2d 347, 65 P.2d 784 (1937).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 18

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

C. Performance or Breach of Obligation

§ 18. Waiver

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  166

A.L.R. Library

[Waiver of, or estoppel to assert, condition subsequent or its breach, 39 A.L.R.2d 1116](#)

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons § 16 \(Answer—Defense—Waiver\)](#)

Unquestionably, a person entitled to support may waive their right thereto¹ or condone a breach of the agreement for support.² The obligee may also waive the personal performance of the obligation by the obligor.³

The right to support may be waived not only by express agreement but also by acts showing an intention to continue the estate in the grantee, or voluntarily to forgo the benefits thereof.⁴ Waiver may also result from a failure to demand performance, or to re-enter the property conveyed upon a breach of the condition for its conveyance, or where the grantor, although he or she is entitled to a reasonable time after the breach to claim forfeiture, does not make such a claim or neglects to bring an action to enforce the agreement for several years.⁵

However, mere indulgence or silent acquiescence or assent does not constitute a waiver especially where it does not appear that the grantee understood that there was a waiver or that he or she relied upon one⁶ nor will a mere delay in asserting a forfeiture for the breach of a condition to render support amount to a waiver.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Buckles v. Smith, 1945 OK 1, 195 Okla. 272, 156 P.2d 1019 \(1945\).](#)
- 2 [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)
- 3 [In re Cornaz' Estate, 8 Cal. 2d 347, 65 P.2d 784 \(1937\).](#)
- 4 [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)
- 5 [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)
- 6 [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)
- 7 [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 19

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

C. Performance or Breach of Obligation

§ 19. Laches

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  166

The application of laches in a support of persons case will depend upon the facts and circumstances of the matter.¹ The mere delay in the assertion of a right without more is not evidence of laches although a long delay is evidence of acquiescence.² Where a grantor's delay in enforcing a forfeiture is not aggravated by any element of estoppel, a delay of less than the period of limitations at law does not constitute laches and will not bar his or her right of re-entry.³ Similarly, where the possession of the premises conveyed is shared by the grantor and the grantee, laches will not be imputed to the grantor because of the grantor's delay in asserting his or her right to make technical re-entry and to have the deed canceled by judicial decree.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Jones v. Boothe, 270 Ala. 420, 119 So. 2d 203 \(1960\).](#)
- ² [Jones v. Boothe, 270 Ala. 420, 119 So. 2d 203 \(1960\)](#) (holding test of remoteness in time is whether the underlying transaction has become obscure in time).
- ³ [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)
- ⁴ [Hannah v. Culpepper, 213 Ala. 319, 104 So. 751 \(1925\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV D Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

D. Duration and Discharge of Obligation

[Topic Summary](#) | [Correlation Table](#)

Research References


West's Key Number Digest


West's Key Number Digest, [Contracts](#)  311

West's Key Number Digest, Deeds  19, 210

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#)  311

West's A.L.R. Digest, Deeds  19, 210

Forms

[Am. Jur. Legal Forms 2d § 243:23](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 20

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

D. Duration and Discharge of Obligation

§ 20. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  311

Forms

[Am. Jur. Legal Forms 2d § 243:23](#) (Limitation of estate to life of grantee)

The duration of an obligation to furnish support is governed by the provisions of the contract.¹ The contract may provide that it continue during the life of the beneficiary or for a shorter period.²

An agreement to support another during the latter's natural life ceases upon the death of the person to be supported. For example, where a third person whose support is the consideration for the conveyance of real property to the grantee dies before such support is furnished, it is impossible and unnecessary for the grantee to furnish such support, and the conveyance will be canceled because of failure of consideration.³ On the other hand, the death of the person obliged to furnish support does not terminate the obligation to furnish support to the obligee where the agreement requires no personal service on the part of the obligor.⁴ If the grantee dies before the grantor, the grantee's heirs may continue to carry out the obligation to support the grantor,⁵ or the amount of support may be charged against the estate of the obligor.⁶

Where the male grantee of a deed marries the female grantor, the law cancels out the consideration for the conveyance, inasmuch as the grantee has assumed the legal obligation of caring for and maintaining the grantor, thus entitling the latter to have the deed canceled.⁷

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Dye v. Dye, 176 Ga. 72, 166 S.E. 861 (1932).
- 2 Dye v. Dye, 176 Ga. 72, 166 S.E. 861 (1932).
- 3 Taylor v. Weller, 213 Md. 578, 132 A.2d 578 (1957); Inches v. Butcher, 104 N.W.2d 556 (N.D. 1960).
- 4 Howard v. Adams, 16 Cal. 2d 253, 105 P.2d 971, 130 A.L.R. 1003 (1940).
- 5 Sutton v. Cornwell, 267 Ky. 346, 102 S.W.2d 25 (1936).
- 6 In re Cornaz' Estate, 8 Cal. 2d 347, 65 P.2d 784 (1937).
- 7 Bracken v. Johnson, 249 S.W.2d 149 (Ky. 1952).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 21

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

D. Duration and Discharge of Obligation

§ 21. Suspension of performance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  19, 210

A.L.R. Library

[Commitment of grantor to institution for insane as ground for setting aside conveyance in consideration of support, 18 A.L.R.2d 906](#)

A change in the circumstances of the person to be supported does not terminate the obligation but merely suspends it.¹ For example, the temporary inability of the grantees to continue performance due to illness and hospitalization may be excusable and will not require the cancellation of the support contract or setting aside any such conveyances.² However, a temporary suspension of performance on the part of the grantee may require the grantee, if performance is undertaken by a third party, to repay the third party for such services.³ Upon the release of the disabled party the obligation to perform renews.⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Taylor v. Weller, 213 Md. 578, 132 A.2d 578 \(1957\); Penas v. Cherveney, 135 Minn. 427, 161 N.W. 150 \(1917\) \(obligee confined to insane asylum\); Dalton v. Florence Home for Aged, 154 Neb. 735, 49 N.W.2d 595 \(1951\).](#)
- ² [Taylor v. Weller, 213 Md. 578, 132 A.2d 578 \(1957\).](#)

- 3 [Taylor v. Weller, 213 Md. 578, 132 A.2d 578 \(1957\)](#) (requiring repayment to county welfare authority for care of grantor during time of grantees' temporary inability to perform).
- 4 [Polacek v. Gripp, 50 Lack. Jur. 105 \(Pa. C.P. 1949\)](#).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV E Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract


E. Agreement to Support as Lien or Charge on Property

[Topic Summary](#) | [Correlation Table](#)

Research References


West's Key Number Digest

West's Key Number Digest, Deeds  144(2)

West's Key Number Digest, Mortgages  17

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, Deeds  144(2)

West's A.L.R. Digest, Mortgages  17

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 22

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

E. Agreement to Support as Lien or Charge on Property

§ 22. Generally; mortgage

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Mortgages 17

An agreement to support a person may be secured by a mortgage on the property of the obligor in spite of the difficulties which may be encountered in the ascertainment of the amount of the obligation.¹ In certain circumstances a conditional deed is to be treated as a mortgage to secure the grantee's performance, and upon breach by him or her, equity may grant relief by foreclosing and extinguishing his or her rights under the conveyance.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

¹ [Cook v. Bartholomew, 60 Conn. 24, 22 A. 444 \(1891\).](#)

² [Blanchard v. Knights, 121 Vt. 29, 146 A.2d 173 \(1958\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 23

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

E. Agreement to Support as Lien or Charge on Property

§ 23. Equitable lien

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  144(2)

A conveyance conditioned on, or in consideration of, an agreement for the support of the grantor or of third persons has the effect in some jurisdictions of creating a charge upon the land, or on the rents and profits from the land, depending upon the nature of the covenant.¹ Even when it is not so expressed in the deed, if the real consideration for a conveyance is an agreement by the grantee to support the grantor, the agreement will operate to create a lien upon the premises conveyed.²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).
A provision in the deed that the support of the grantor shall be on the land clearly indicates the intent of the grantor to impose the burden of his support upon the land. [Loar v. Poling](#), 107 W. Va. 280, 148 S.E. 114, 64 A.L.R. 1246 (1929).
- ² [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950); [Application of Mach](#), 71 S.D. 460, 25 N.W.2d 881 (1947).
However, where an agreement for support is not the principal consideration of the contract, it is considered a personal obligation of the grantee and not a charge upon the premises conveyed. [Higgins v. Higgins](#), 223 N.C. 453, 27 S.E.2d 128 (1943).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons IV F Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

F. Agreement to Support as Covenant or Condition


[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, Deeds  144(1), 145, 155

A.L.R. Library

A.L.R. Index, Support of Persons
West's A.L.R. Digest, Deeds  [144](#), [145](#), [155](#)

Forms

[Am. Jur. Legal Forms 2d §§ 243:19, 243:20](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 24

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons

Karon J. Powell, J.D.

IV. Interpretation, Operation, and Effect of Contract

F. Agreement to Support as Covenant or Condition

§ 24. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  144(1), 145, 155

Forms

[Am. Jur. Legal Forms 2d § 243:19](#) (Support as condition subsequent to conveyance)

[Am. Jur. Legal Forms 2d § 243:20](#) (Maintenance of property and payment of taxes and liens as condition subsequent to conveyance)

A key issue in contracts for support is whether or not a provision in a deed conveying property constitutes a covenant or a condition¹ because if the provision is a covenant, the remedy is money damages whereas if the provision is a condition the remedy is cancellation of the deed and the forfeiture of the property to the grantor.² Similarly, it is sometimes necessary to determine whether the stipulation constitutes a condition precedent, a condition subsequent, or a conditional limitation—where a stipulation is a condition precedent performance of the promise of support is required before the estate vests in the grantee, whereas if it is a condition subsequent, the nonperformance of the promise results in the divesting or forfeiture of the estate.³ Where the provision is a condition subsequent, affirmative action by the grantor is necessary to revest the title in himself or herself upon a breach of the condition, whereas if it is a conditional limitation, the estate reverts to the grantor upon the breach of the condition without the need of affirmative action on his or her part.⁴

These determinations—as far as covenant or a condition—depends upon the intent of the parties,⁵ as well as the language of the instrument or contract itself.⁶ Conditions subsequent will only be found where the contract's language is clear and unequivocal.⁷

Additionally, the law does not favor either the postponement of the vesting of estates by conditions precedent or the destruction of estates already vested by conditions subsequent.⁸

Where an agreement of the grantee to support the grantor is regarded simply as a covenant, it falls into one of three legal categories, depending entirely upon the expressed intention of the parties.⁹ A covenant of the first class imposes upon the grantee a mere personal obligation to support the grantor; a covenant of the second class makes the obligation of the grantee to support the grantor a charge or lien on the rents and profits from the land conveyed; and a covenant of the third class makes such obligation a charge or lien upon the land itself.¹⁰

The use of precise technical language is not necessary to create an estate upon a condition subsequent and the use of the term "condition" itself is not essential, but it is sufficient if the language used clearly and unequivocally expresses the intention of the parties that the estate granted is to be defeated upon a breach of the qualification or condition to support the grantor.¹¹ A few courts have treated the agreement to support, whether oral or in writing, as an equitable condition subsequent and have implied the condition in the conveyance even though the deed is absolute in form, and thus, upon the breach of the condition the grantor may exercise his or her right of re-entry or rescission and have the conveyance canceled as if the condition had been incorporated in the deed.¹²

The language employed in a particular instrument may make the performance of the promise of the grantee to support the grantor a condition precedent to the vesting of the estate.¹³ However, where no intent to create a condition precedent is expressed, a condition to support a person other than the grantor is a condition subsequent rather than a condition precedent.¹⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Polette v. Williams](#), 456 S.W.2d 328 (Mo. 1970); [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
As to distinguishing between covenants and conditions, see [Am. Jur. 2d, Contracts § 457](#).
- 2 [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950); [Rosek v. Kotzur](#), 267 S.W. 759 (Tex. Civ. App. San Antonio 1924).
A provision in a deed that provided in the event that the grantee failed to fully and faithfully perform all of his obligations with respect to supporting the grantor that title would revert to the grantor is deemed to be a condition subsequent which would render the vested estate liable to be defeated. [Polette v. Williams](#), 456 S.W.2d 328 (Mo. 1970).
- 3 [Lucas v. Lucas](#), 171 Ga. 806, 156 S.E. 680, 76 A.L.R. 737 (1931); [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).
Where a deed is silent as to the penalty in the event of the grantees' failure to provide lifetime support the requirement of lifetime support is deemed a covenant rather than a condition precedent or subsequent upon default and as such, the grantor's recourse is an action for damages. [Hearne v. Bradshaw](#), 305 S.W.2d 618 (Tex. Civ. App. Dallas 1957), judgment aff'd, 158 Tex. 453, 312 S.W.2d 948 (1958).
- 4 [Lucas v. Lucas](#), 171 Ga. 806, 156 S.E. 680, 76 A.L.R. 737 (1931); [Mash v. Bloom](#), 133 Wis. 646, 114 N.W. 457 (1907).
- 5 [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
Where the instrument provides that the grantee, in addition to supporting the grantor, should pay all of the grantor's debts, medical bills, funeral expenses, and taxes and assessments on the land, a covenant is created rather than a condition subsequent. [Federal Land Bank of Louisville v. Luckenbill](#), 213 Ind. 616, 13 N.E.2d 531 (1938).
- 6 [Rosek v. Kotzur](#), 267 S.W. 759 (Tex. Civ. App. San Antonio 1924) (holding that before a promise will be construed a condition subsequent the language of the contract must provide that a breach will destroy the estate and reinvest it with the grantor).

- 7 Polette v. Williams, 456 S.W.2d 328 (Mo. 1970); Anderson v. Anderson, 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
- 8 Polette v. Williams, 456 S.W.2d 328 (Mo. 1970); Minor v. Minor, 232 N.C. 669, 62 S.E.2d 60 (1950); Anderson v. Anderson, 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981).
- 9 Minor v. Minor, 232 N.C. 669, 62 S.E.2d 60 (1950).
- 10 Minor v. Minor, 232 N.C. 669, 62 S.E.2d 60 (1950).
- 11 Kuhn v. Kuhn, 125 Ind. App. 337, 123 N.E.2d 916 (1955); Sisk v. Randon, 123 Tex. 326, 70 S.W.2d 689 (Comm'n App. 1934); Lowman v. Crawford, 99 Va. 688, 40 S.E. 17 (1901).
- 12 Dietz v. Dietz, 244 Minn. 330, 70 N.W.2d 281 (1955).
- 13 Minor v. Minor, 232 N.C. 669, 62 S.E.2d 60 (1950).
- 14 De Conick v. De Conick, 154 Mich. 187, 117 N.W. 570 (1908).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons V A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑 191, 268
West's Key Number Digest, [Damages](#) 🔑 120(5)
West's Key Number Digest, Deeds 🔑 19, 144(2)
West's Key Number Digest, [Equity](#) 🔑 20, 23
West's Key Number Digest, [Specific Performance](#) 🔑 73
West's Key Number Digest, [Wills](#) 🔑 67

A.L.R. Library

A.L.R. Index, Support of Persons
West's A.L.R. Digest, [Contracts](#) 🔑 191, 268
West's A.L.R. Digest, [Damages](#) 🔑 120(5)
West's A.L.R. Digest, Deeds 🔑 19, 144(2)
West's A.L.R. Digest, [Equity](#) 🔑 20, 23
West's A.L.R. Digest, [Specific Performance](#) 🔑 73
West's A.L.R. Digest, [Wills](#) 🔑 67

Forms

Am. Jur. Legal Forms 2d §§ 243:27, [243:28](#)

[Am. Jur. Pleading and Practice Forms, Support of Persons § 15](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 25

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

1. Party Furnishing Support

§ 25. Relief at law; generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  268

A.L.R. Library

[Right of one who pays medical or similar expenses of injured person under life care, or similar, contract to recover the cost thereof from tortfeasor, 78 A.L.R.2d 822](#)

[Measure and elements of damages recoverable for breach of contract to support person, 50 A.L.R.2d 613](#)

[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166](#)

Forms

[Am. Jur. Legal Forms 2d § 243:27](#) (Effect of death of person being supported)

Where the person to be supported fails to perform their obligation under a contract of support, the person furnishing the support may rescind the contract and recover for the support furnished on a quantum meruit theory.¹ Similarly, where the person who contracts to support another for life is prevented by sickness or death from performing the entire contract, such person or their

personal representatives may recover from the person supported on quantum meruit.² An example of the grantor failing to perform would be where that person simply moves away without justification making it impossible for the grantee to continue rendering services.³ Furthermore, if the person to be supported breaches an agreement to give all his or her property to another in consideration of receiving care and support from the latter, the person furnishing such support has an action at law for damages for the breach and he or she is entitled to recover the value of the services and the money advanced by him or her for the support of the other party.⁴

The making of a will by the grantor cannot defeat the plaintiff's right to recover where the terms of the will contradict the terms of the contract regarding the support of the grantor.⁵ Additionally, the fact that the grantor and grantee had children will not obviate an agreement to provide a home in exchange for support.⁶

If the person obliged to perform cannot do so because of an act of God or where performance is made impossible by the fact that the person to be supported is committed to an insane asylum, the obligor is entitled to no more than the fair value of the services actually rendered and if the consideration for the support has already been given the obligor may not retain the full consideration paid.⁷ In the case of a wilfull breach, some courts hold that there may be a recovery for the proportional value of what support has been actually furnished⁸ while other courts hold that there can be no recovery even on a quantum meruit.⁹

Where the obligor took care of the obligee under a contract providing that the obligee would convey, upon his or her death, all his or her property to the obligor, and where the obligor erroneously regarded the agreement as a trust and thereupon took possession of the obligee's money on deposit in a bank, the obligor is not estopped, when sued by the obligee's administrator therefor, from setting off his or her claim against the estate under the contract.¹⁰

Where the performance of the obligation to support is rendered more expensive or burdensome by a third party's negligent conduct the person obliged to furnish support has no direct cause of action against the tortfeasor to recover the value of the expenses incurred by him or her, nor can he or she recover on the theory of subrogation expressly assigned under the contract for all expenses which he or she has incurred because of the negligence where there is an express statutory provision against assignments of a thing in action.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996); [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946); [Thurston v. Nutter](#), 125 Me. 411, 134 A. 506, 47 A.L.R. 1156 (1926).
- 2 [Preble v. Preble](#), 115 Me. 26, 97 A. 9 (1916).
- 3 [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946).
- 4 [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996); [Carter v. Witherspoon](#), 156 Miss. 597, 126 So. 388 (1930); [In re Estate of Roccamonte](#), 324 N.J. Super. 357, 735 A.2d 614 (App. Div. 1999).
- 5 [Glauert v. Huning](#), 266 S.W.2d 653 (Mo. 1954).
- 6 [In re Napoli's Will](#), 110 N.Y.S.2d 406 (Sur. Ct. 1952), decree modified on other grounds, 282 A.D. 814, 123 N.Y.S.2d 10 (3d Dep't 1953).
- 7 [Stocking](#), by [Monteiro v. Hall](#), 81 R.I. 168, 100 A.2d 850 (1953).
- 8 [Sullivan v. Sullivan](#), 122 Ky. 707, 29 Ky. L. Rptr. 239, 92 S.W. 966 (1906); [Glasgow v. Peatross](#), 201 Va. 43, 109 S.E.2d 135 (1959) (awarding lost profits).
- 9 [Ptacek v. Pisa](#), 231 Ill. 522, 83 N.E. 221 (1907).
- 10 [Shadburn Banking Co. v. Streetman](#), 180 Ga. 500, 179 S.E. 377, 99 A.L.R. 854 (1935).

11 [Fifield Manor v. Finston, 54 Cal. 2d 632, 7 Cal. Rptr. 377, 354 P.2d 1073, 78 A.L.R.2d 813 \(1960\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 26

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

1. Party Furnishing Support

§ 26. Relief in equity

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Equity](#)  23

A.L.R. Library

[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166](#)

Forms

[Am. Jur. Legal Forms 2d § 243:28](#) (Conveyance void on child's default)

As a general rule, the lack of an adequate remedy at law to compensate the person furnishing support or otherwise to protect their rights has been a factor in the allowance of equitable relief in favor of such person.¹ Conversely, the fact that the person furnishing support has an adequate remedy at law has been a factor in denying equitable relief to such person during the life of the person to be supported.²

Where relief in equity is proper, courts of equity are not bound to give any stereotyped form of relief but may adapt the relief to the peculiar facts of the case as their sole concern is that the decree entered shall effectuate justice.³ Where the person furnishing support is entitled to some type of equitable relief, the courts have annulled or canceled conveyances from the person who has been supported to a third person who has taken such a conveyance with knowledge of the rights of the person furnishing support.⁴ In other cases, the courts have decreed that such third person, taking with knowledge of the rights of the person furnishing support, holds the property conveyed as a trustee for the benefit of the person who furnished support, until the satisfaction of the terms and conditions of the contract.⁵

Where two or more persons agree to convey property to another in consideration of the latter's agreement to provide support to the former, and one of the persons to be supported dies, the person furnishing support is entitled to equitable relief against the survivor declaring that person as to the owner of the property subject to the rights of the survivor and subject to the person contracting to furnish support continuing to perform their obligations during the life of the survivor.⁶ However, relief against the survivor of two persons who had promised to convey property to another in consideration of their support by the latter has been denied on the ground that performance by the person obliged to furnish support was of such a character as to be susceptible of fair estimate which would fully compensate him for the support rendered, and consequently, the obligor was not entitled to a decree to prevent the survivor from ousting him from the possession of the property.⁷

Ordinarily, the heirs of the person furnishing support are entitled to equitable relief against the person who has been supported where the person who contracted to furnish support has performed his or her part of the contract.⁸

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Cherry v. Whalen](#), 25 App. D.C. 537, 1905 WL 17724 (App. D.C. 1905); [Hayes v. Moffatt](#), 83 Mont. 214, 271 P. 433 (1928).
- 2 [Van Meter v. Norris](#), 318 Pa. 137, 177 A. 799 (1935).
- 3 [Chantland v. Sherman](#), 148 Iowa 352, 125 N.W. 871 (1910).
- 4 [Bird v. Pope](#), 73 Mich. 483, 41 N.W. 514 (1889).
- 5 [Brackenbury v. Hodgkin](#), 116 Me. 399, 102 A. 106 (1917).
- 6 [Taylor v. Taylor](#), 79 Kan. 161, 99 P. 814 (1908).
- 7 [Richardson v. Richardson](#), 114 Minn. 12, 130 N.W. 4 (1911).
- 8 [Torgerson v. Hauge](#), 34 N.D. 646, 159 N.W. 6, 3 A.L.R. 164 (1916); [Anderson v. Anderson](#), 620 S.W.2d 815 (Tex. Civ. App. Tyler 1981) (holding after death of grantor heirs under will could seek cancellation of conveyance).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 27

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

1. Party Furnishing Support

§ 27. Relief in equity—Specific performance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Specific Performance](#)  73

A.L.R. Library

[Comment Note.—Mutuality of remedy as essential to granting of specific performance, 22 A.L.R.2d 508](#)
[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166](#)

In some cases, the specific performance of a contract for support may be granted or withheld upon a consideration of all the circumstances and in the exercise of sound judicial discretion.¹ Generally speaking, the person furnishing support cannot enforce an executory agreement to convey land in consideration of support which contemplates the personal services of the person furnishing support until it has been fully executed by him or her for there is no mutuality of obligation.² After the support has been rendered, as agreed upon, the agreement to convey the land may be specifically enforced for the quality of mutuality originally lacking when the contract was made has been subsequently supplied by full performance so that the obligee no longer needs any remedy.³

Where the person to be supported dies, the contract is deemed to have been fully performed by the person contracting to furnish such support,⁴ and in that case, the agreement of the deceased to convey his or her property to the person who furnished him or her support may be specifically enforced against the deceased's heirs or estate, or against anyone who has taken the property

with notice of the agreement.⁵ The fact that on account of the early death of the grantor, the grantee was required to perform the agreement for only a short period of time, will not necessarily make the remedy of specific performance unavailable, for at the time of the agreement, the parties must have had in mind that contingency, and the fact that they did not contract against it is significant.⁶

Specific performance may also be granted where the services to be rendered are for a period of time not measured by the lifetime of the person to be supported, and the person obliged to furnish support has fully performed their part of the obligation.⁷

Where the person contracting to furnish support dies after having performed a part of the contract, the heirs of the deceased may be entitled to specific performance against the person to be supported so long as the contract for support does not provide for a forfeiture upon death.⁸ Furthermore, if the person obliged to furnish support during the life of the decedent was ready, willing, and able to perform the services required, and his or her failure to complete them was due to the fault of the deceased, he or she may compel a conveyance.⁹ Some statutes, however, declare that specific performance shall not be decreed unless the plaintiff may be compelled to perform, or has performed, all his or her undertakings.¹⁰

An infant may compel the specific performance of a contract by an adult to convey land to him or her in consideration that such infant should pay the adult's expenses at a hospital and maintain him or her during his or her natural life where the infant has performed his or her part of the agreement.¹¹

Where the person contracting to furnish support commits a breach of the agreement that person is not entitled to specific performance although he or she may be allowed compensation for the support or services rendered to the person supported.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Winne v. Winne](#), 166 N.Y. 263, 59 N.E. 832 (1901).
- 2 [Newman v. French](#), 138 Iowa 482, 116 N.W. 468 (1908); [Asberry v. Mitchell](#), 121 Va. 276, 93 S.E. 638 (1917).
- 3 [Sanderson v. Sanderson](#), 130 Tex. 264, 109 S.W.2d 744 (Comm'n App. 1937).
- 4 [Howe v. Watson](#), 179 Mass. 30, 60 N.E. 415 (1901).
- 5 [Whitney v. Hay](#), 181 U.S. 77, 21 S. Ct. 537, 45 L. Ed. 758 (1901).
- 6 [Lothrop v. Marble](#), 12 S.D. 511, 81 N.W. 885 (1900); [Martin v. Moore](#), 92 W. Va. 671, 115 S.E. 833 (1923); [Bryson v. McShane](#), 48 W. Va. 126, 35 S.E. 848 (1900).
- 7 [Reilly v. Reilly](#), 135 Iowa 440, 110 N.W. 445 (1907).
- 8 [Torgerson v. Hauge](#), 34 N.D. 646, 159 N.W. 6, 3 A.L.R. 164 (1916).
As to specific performance, generally, see Am. Jur. 2d, Specific Performance §§ 1 et seq.
- 9 [Sanderson v. Sanderson](#), 130 Tex. 264, 109 S.W.2d 744 (Comm'n App. 1937).
- 10 [Roy v. Pos](#), 183 Cal. 359, 191 P. 542 (1920).
- 11 [Asberry v. Mitchell](#), 121 Va. 276, 93 S.E. 638 (1917).
- 12 [Jay v. Whiteside](#), 205 S.W.2d 389 (Tex. Civ. App. Eastland 1947), writ refused n.r.e.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 28

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

1. Party Furnishing Support

§ 28. Relief in equity—Declaration of trust; quia timet

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Wills](#)  67

A.L.R. Library

[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166](#)

In some cases in which the person to be supported breached his or her contract to convey property to another in consideration of the latter's promise to support the former, it has been held proper to give relief to the person furnishing support by impressing a trust upon the property for the benefit of such person.¹ Where property is conveyed in consideration of an agreement by the grantee to support the grantor, and the deed is placed in escrow to be delivered to the grantee upon the death of the grantor, the property so conveyed becomes impressed with a trust enforceable against devisees thereof.² Thus, in some cases, the courts will grant relief under the principle of quia timet.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Matheson v. Gullickson, 222 Minn. 369, 24 N.W.2d 704 \(1946\).](#)
As to constructive trusts, generally, see [Am. Jur. 2d, Trusts §§ 168 to 204.](#)

- 2 Alward v. Manore, 52 Ohio App. 129, 6 Ohio Op. 248, 19 Ohio L. Abs. 10, 3 N.E.2d 547 (6th Dist. Lucas County 1935).
- 3 White v. Massee, 202 Iowa 1304, 211 N.W. 839, 66 A.L.R. 1434 (1927).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 29

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

a. Relief at Law

§ 29. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Damages](#)  120(5)

West's Key Number Digest, [Deeds](#)  19

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons § 15](#) (Answer—Defense—Prevention of performance by plaintiff)

Generally speaking, the rule is that the remedy for the breach of an agreement to support another is a remedy at law.¹ In that instance, the grantor may sue at law for the amount of the consideration as it becomes due² and in some jurisdictions the rule is that the remedy at law to recover possession is exclusive and equity will not afford relief by decreeing a cancellation of the deed.³ However, where the grantee has made improvements upon the land, the grantor may be required to reimburse him or her.⁴

As against one who gains possession of land under a contract to furnish the owner a home and support, and then breaches the agreement, the owner may maintain an ejectment action for the land.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Robitaille v. Robitaille, 34 Mass. App. Ct. 947, 613 N.E.2d 933 (1993); Dixon v. Milling, 102 Miss. 449, 59 So. 804 (1912); Davison v. Davison, 71 N.H. 180, 51 A. 905 (1901).
- 2 Whittaker v. Trammell, 86 Ark. 251, 110 S.W. 1041 (1908).
- 3 Davison v. Davison, 71 N.H. 180, 51 A. 905 (1901).
- 4 Johnson v. Paulson, 103 Minn. 158, 114 N.W. 739 (1908).
- 5 Johnson v. Johnson, 125 S.W. 1097 (Ky. 1910).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 30

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

a. Relief at Law

§ 30. Damages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Damages](#)  120(5)

A.L.R. Library

[Measure and elements of damages recoverable for breach of contract to support person, 50 A.L.R.2d 613](#)

An action at law for damages may be maintained by the obligee for breach of an agreement to support him or her.¹ When a deed conveying property to another is executed in consideration of future support and maintenance of the grantor, the grantor may sue at law for damages if the provision is not fulfilled by the grantee.²

The fact that a contract for support is a continuing one does not prevent a determination of the damages as of the time of its breach.³ The most commonly stated rule of damages for breach of contract for support is the value, or the fair or reasonable value, of the promised support lost by the obligee.⁴ Additionally, the correct measure of damages for breach of contract to provide board for a person for life and a suitable burial upon his or her death is a sum of money which, invested in safe securities, would produce a monthly income sufficient to board him or her during his or her life, leaving only enough at his or her death to bury him or her decently.⁵ The claim that the future earnings of the person to be supported should be credited against the amount otherwise recoverable has been rejected where the agreement made no provision for such deduction.⁶

As to the issue of whether a person obliged to furnish support who breached his or her agreement was liable to the extent or value of the consideration given, conveyed, or paid to him or her, the rule is that the promisor is not liable for the full value of the consideration but only for the cost to the grantor of those undertakings which the breached contract for support placed as obligations upon the grantee.⁷ Also, where the person obliged to furnish support has given a bond conditioned on their performing their agreement to support a person, the person to be supported is not entitled to recover the full penalty of the bond upon a breach of the agreement but only such damages as the proof discloses he or she has suffered by reason of the violation of the conditions of the bond.⁸

A key issue in actions for damages for breach of contract is whether the person entitled to be supported can recover damages only up to the date of the commencement of the action or for the entire period from the breach of the contract to the actual or estimated time of death of the person to be supported—some courts hold that upon a total breach that person is entitled to recover damages not only for the period from the date of the breach to the commencement of the action or to the date of the trial or verdict, but for the estimated life span of the person as well.⁹ Where the person to be supported dies prior to the commencement of the action the damages are to be based on the period from the date of the breach to the time of death.¹⁰

Damages for breach of an agreement of support have been held not to be excessive where the amount, if invested in an annuity, would have provided an annual income not incommensurate with the station in life of the person to be supported.¹¹ Additionally, an amount to be paid in case of breach of a contract of support which was designated as a "penal sum" could not be construed to represent liquidated damages since there were no indications in the nature of the case or the tenor of the agreement that the parties had fairly estimated and adjusted the damages at the time when the contract was made.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [McGill v. Malo](#), 23 Conn. Supp. 447, 184 A.2d 517 (Super. Ct. 1962); [Robitaille v. Robitaille](#), 34 Mass. App. Ct. 947, 613 N.E.2d 933 (1993); [Dunn v. Ryan](#), 82 N.J. Eq. 356, 88 A. 1025 (Ct. Err. & App. 1913).
The failure of the grantee to provide support for the grantor, even though such support was the sole consideration for the deed, amounts to nothing more than a mere breach of contract for which the grantor has an adequate remedy by an action for damages. [Brand v. Power](#), 110 Ga. 522, 36 S.E. 53 (1900).
- 2 [Bryant v. Bryant](#), 239 Ark. 61, 387 S.W.2d 322 (1965); [Robitaille v. Robitaille](#), 34 Mass. App. Ct. 947, 613 N.E.2d 933 (1993).
- 3 [Van Sickle v. Keck](#), 42 N.M. 450, 81 P.2d 707 (1938).
- 4 [Robitaille v. Robitaille](#), 34 Mass. App. Ct. 947, 613 N.E.2d 933 (1993).
Where a grandmother had transferred property to her children in return for oral assurances of lifetime support and where the children sought to evict the grandmother her measure of damages for the breach of the agreement would be the monetary value of the grandmother's right to live in the house. [Mulvanity v. Pelletier](#), 40 Mass. App. Ct. 106, 661 N.E.2d 952 (1996).
- 5 [Van Sickle v. Keck](#), 42 N.M. 450, 81 P.2d 707 (1938).
- 6 [Howard v. Adams](#), 16 Cal. 2d 253, 105 P.2d 971, 130 A.L.R. 1003 (1940).
- 7 [McGill v. Malo](#), 23 Conn. Supp. 447, 184 A.2d 517 (Super. Ct. 1962).
Where realty is conveyed to another in consideration of his promise to support the grantor for life, and there is a breach of the agreement by the grantee, the proper measure of damages is the reasonable value of the support of the grantor from the date of the deed to the time of his death and not the value of the property conveyed. [Lippincott v. Houseberg](#), 19 Pa. D. & C.2d 558, 1960 WL 6090 (C.P. 1960).
- 8 [Stuart v. Abbey](#), 62 Misc. 84, 116 N.Y.S. 259 (County Ct. 1909).
- 9 [McGill v. Malo](#), 23 Conn. Supp. 447, 184 A.2d 517 (Super. Ct. 1962).
The recovery of a widowed mother for breach of a contract to support her minor child has been limited to the child's years of dependency. [MacGerry v. Rodgers](#), 144 Wash. 375, 258 P. 314 (1927).
- 10 [Kytile v. Kytile](#), 128 Ga. 387, 57 S.E. 748 (1907).

- 11 Howard v. Adams, 16 Cal. 2d 253, 105 P.2d 971, 130 A.L.R. 1003 (1940); Dumas v. Dumas, 84 Ga. App. 265, 66 S.E.2d 129 (1951).
- 12 Wilkes v. Bierne, 68 W. Va. 82, 69 S.E. 366 (1910).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 31

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 31. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Equity](#)  23

Where a breach of a promise to support occurs, courts applying equitable principles gravitate to the hardship of such cases to give relief to a grantor who has conveyed property in consideration of the grantee's promise to support him or her particularly where the grantor is of advanced years and without other means of support.¹ The extent of equitable relief that the courts may grant is such as the facts² or statute provides³ as will bring about substantial justice.⁴ A variety of results reached by the courts has depended not only upon the facts of each particular case⁵ but also upon the particular ground or theory adopted by the court in granting relief.⁶ Some cases have treated a conveyance conditioned for the support of the grantor as a mortgage to secure the grantee's performance of the condition, which may, upon a breach of the condition, be foreclosed by a suit in equity.⁷ In other cases, reconveyance of the property has been decreed even in the absence of a specific provision in the deed for a reconveyance⁸ upon the theory that there is a continuing obligation in the nature of a trust and that the failure to support the grantor is a renunciation of that trust⁹ or upon the theory that a decree of specific performance is not available and a judgment for damages would be an inadequate remedy.¹⁰ In other cases, the agreement to support the grantor has been considered as a condition subsequent, the breach of which entitles the grantor to re-enter the property and revest title in him- or herself even without judicial aid although he or she may maintain a suit in equity to judicially establish his or her status as regards the property and quiet his or her title.¹¹ Where the grantee refuses to surrender the land, the grantor or his or her heirs may maintain ejectment to recover the same.¹²

Where the grantor survives the grantee who, during his or her life, had faithfully performed a covenant to support the grantor for life, relief will be given to the grantor as the circumstances and equities of the particular case may require.¹³ However, a grantor

may have to do equity such as by having an accounting made to determine the value of the support furnished and the value of the benefits received by the grantee and if the grantee expended more for the support of the grantor than what he or she received from such grantor during his or her lifetime the grantor might be required to pay the amount ascertained as a condition of relief.¹⁴ Some courts refuse to decree the cancellation of the deed in the event of the death of the grantee before the grantor as long as the grantee's children to whom title to the property has passed, or anyone in privity with such children, comply with the obligation to support the grantor.¹⁵ Additionally, relief will be denied to a grantor seeking to void a conveyance if the grantor made the transfer for the purpose of defrauding a third party.¹⁶ Other courts deny the right to cancellation where the grantee has supported the grantor for some time but subsequently dies.¹⁷ Furthermore, although relief by way of rescission of the conveyance may be denied, the court may direct that the property be administered for the benefit of the grantor and the grantee's heirs, rendering to the grantor his or her reasonable maintenance out of the income from or corpus of the estate, and reserving for the heirs of the grantee all that remains at the time of the grantor's death in such proportions as they are legally entitled to.¹⁸

Where a conveyance is made in consideration of the support of the grantor, the grantor's death before the grantee can perform any part of the agreement results in a failure of consideration and the grantee is not entitled to retain the property conveyed as a consideration for such support.¹⁹ Similarly, where the support of a designated third person is the consideration for the conveyance of real property but such person dies before such support can be furnished, there is a failure of consideration which entitles the grantor to cancel and rescind the conveyance.²⁰

Where the grantor of a deed in consideration of support by the grantee becomes insane and is taken to a hospital before the grantee can perform any part of his or her agreement, there is an entire failure of consideration.²¹ However, where there has been partial performance of the agreement, the commitment of the grantor to an insane asylum does not constitute such a failure of consideration as would justify a cancellation of a deed.²²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Haataja v. Saarenpaa](#), 118 Minn. 255, 136 N.W. 871 (1912); [De Atley v. Streit](#), 81 Mont. 382, 263 P. 967 (1928).
- 2 [Peters v. Peters](#), 62 S.D. 563, 255 N.W. 466 (1934).
- 3 [Vaughn v. Carter](#), 488 So. 2d 1348 (Ala. 1986).
- 4 [Rennolds v. Rennolds](#), 312 So. 2d 538 (Fla. Dist. Ct. App. 2d Dist. 1975); [Inches v. Butcher](#), 104 N.W.2d 556 (N.D. 1960).
- 5 [Radford v. Radford](#), 388 S.W.2d 33 (Mo. 1965).
- 6 [Anderson v. Reed](#), 20 N.M. 202, 148 P. 502 (1915).
- 7 [Abbott v. Sanders](#), 80 Vt. 179, 66 A. 1032 (1907).
- 8 [Swartz v. Hafer](#), 354 Pa. 320, 47 A.2d 224 (1946).
- 9 [Grant v. Bell](#), 26 R.I. 288, 58 A. 951 (1904).
- 10 [Caramini v. Tegulias](#), 121 Conn. 548, 186 A. 482, 112 A.L.R. 666 (1936).
- 11 [Glocke v. Glocke](#), 113 Wis. 303, 89 N.W. 118 (1902).
- 12 [Cales v. Ford](#), 126 W. Va. 158, 28 S.E.2d 429, 150 A.L.R. 398 (1943).
- 13 [Stephens v. Daly](#), 266 F. 1009 (App. D.C. 1920); [Moran v. Beson](#), 225 Mich. 144, 195 N.W. 688 (1923).
Although ordinarily a deed which is otherwise valid cannot be impugned by total or partial failure of consideration, deeds executed in consideration of support form an exception to this rule. [Bruno v. Bruno](#), 404 Pa. 502, 172 A.2d 863 (1961).
- 14 [Beard v. Beard](#), 200 Ky. 4, 254 S.W. 430 (1923); [Goodwin v. Goodwin](#), 36 Tenn. App. 630, 260 S.W.2d 186 (1953).
- 15 [Anders v. Anders](#), 143 Fla. 721, 197 So. 451 (1940).

- 16 *McMichael v. Flynn*, 686 So. 2d 254 (Ala. Civ. App. 1995).
17 *Knight v. Jones*, 93 S.C. 376, 76 S.E. 978 (1913).
18 *Marcum v. Marcum*, 94 W. Va. 686, 120 S.E. 73, 34 A.L.R. 133 (1923).
19 *Rayner v. McCabe*, 319 Mass. 311, 65 N.E.2d 417 (1946).
20 *Inches v. Butcher*, 104 N.W.2d 556 (N.D. 1960).
21 *Rayner v. McCabe*, 319 Mass. 311, 65 N.E.2d 417 (1946).
22 *Tate v. Murphy*, 1949 OK 228, 202 Okla. 671, 217 P.2d 177, 18 A.L.R.2d 892 (1949).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 32

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 32. Specific performance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Specific Performance](#)  73

A.L.R. Library

[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services, 7 A.L.R.2d 1166](#)

Although some courts have refused to award specific performance in cases of a breach of a contract for support,¹ other courts have awarded such relief.² Additionally, courts of equity will not compel specific performance by making the obligor and obligee live together where friction has developed between them and the courts have generally found some other means of awarding relief.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Steere v. Palmer](#), 359 Mo. 664, 223 S.W.2d 391 (1949) (denying relief because of insufficient proofs as to alleged oral agreement); [Lambert v. Lambert](#), 96 N.H. 376, 77 A.2d 34 (1950) (stating that a promise to render personal services will not be specifically enforced by an affirmative decree); [Vincent v. Campbell](#),

140 N.J. Eq. 140, 53 A.2d 313 (Ch. 1947) (denying relief because of insufficient proofs as to agreement for support).

As to specific performance, generally, see Am. Jur. 2d, Specific Performance §§ 1 et seq.

2 Walls v. Savage, 243 Ga. 198, 253 S.E.2d 183 (1979); Leighton v. Leighton, 10 Mich. App. 424, 159 N.W.2d 750 (1968); Owens v. Church, 675 S.W.2d 178 (Tenn. Ct. App. 1984).

3 Brinkley v. Patton, 1944 OK 29, 194 Okla. 244, 149 P.2d 261 (1944).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 33

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 33. Equitable lien

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Equity](#)  20

In some cases where the grantee of land conveyed in consideration of his or her agreement to support the grantor fails to comply with such agreement courts of equity have intervened and declared a lien on the property for a reasonable sum for the support of the grantor.¹ Thus, where the provision in the deed is construed as an equitable lien, the remedy for a breach is not to cancel the deed but to ascertain the value of the promised support and enforce a judgment for the same against the property.² The court may appoint a receiver to take charge of the property conveyed, to rent it, and to pay from the proceeds the sum necessary in fulfillment of the agreement,³ or it may order the sale of the property and apply the proceeds for the satisfaction of the amount unpaid.⁴ Where the courts have sustained the right of the grantor to an equitable lien, they have not expressly or impliedly denied his or her right, in certain cases, to a cancellation of the deed.⁵

Observation:

Where a party seeks the imposition of an equitable lien just because the court denies that relief does not preclude that party from obtaining money damages resulting from the breach.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [In re Estate of English](#), 691 S.W.2d 485 (Mo. Ct. App. W.D. 1985); [Jahss v. Lichterman](#), 197 Misc. 712, 95 N.Y.S.2d 580 (Sup 1950).
As to equitable liens, generally, see [Am. Jur. 2d, Liens §§ 30 to 51](#).
- 2 [Rosek v. Kotzur](#), 267 S.W. 759 (Tex. Civ. App. San Antonio 1924).
- 3 [Webster v. Cadwallader](#), 133 Ky. 500, 118 S.W. 327 (1909).
- 4 [Robertson v. Newman](#), 2 Tenn. Ch. App. 181 (Ch. App. 1901).
- 5 [Simmons v. Shafer](#), 98 Kan. 725, 160 P. 199 (1916).
- 6 [Hall v. Scott](#), 201 Miss. 540, 29 So. 2d 640 (1947).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 34

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 34. Trust

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

West's Key Number Digest, [Deeds](#)  144(2)

A.L.R. Library

[Remedies during promisor's lifetime on contract to convey or will property at death in consideration of support or services,
7 A.L.R.2d 1166](#)

Where property is conveyed under an agreement that the transferee will support the transferor, a court of equity may impose a constructive trust upon the property to insure the performance of the obligation.¹ The determining factor for imposing such a trust are the circumstances of the case, as well as whether or not there is a dominant relationship between the parties as in the case of parent and child,² as well as the promissory element of any agreement allegedly entered into between the parties.³ The purpose of imposing a constructive trust is to avoid injustice to the interests and assets of the grantor.⁴

Caution:

Although the remedy of a constructive trust is appealing a court will refuse to order such relief if the grantor seeking the relief cannot prove an unfulfilled promise on the part of the grantee.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Mackey v. Davidson, 222 Md. 197, 159 A.2d 838 (1960); Whalen v. Harvey, 235 A.D.2d 792, 653 N.Y.S.2d 159 (3d Dep't 1997).
- 2 Herston v. Austin, 603 So. 2d 976 (Ala. 1992); Nowell v. Larrimore, 205 Md. 613, 109 A.2d 747 (1954).
- 3 Whalen v. Harvey, 235 A.D.2d 792, 653 N.Y.S.2d 159 (3d Dep't 1997).
- 4 Herston v. Austin, 603 So. 2d 976 (Ala. 1992).
- 5 Tedesco v. Tedesco, 269 A.D.2d 660, 702 N.Y.S.2d 459 (3d Dep't 2000).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 35

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 35. Cancellation and rescission

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  19

Where there has not been performance by the grantee in some jurisdictions equitable relief is denied on the theory that the remedy for such a breach—on the part of the grantor—is an adequate remedy at law.¹ Thus, cancellation is not available unless there are special circumstances affecting the adequacy of other remedies, such as fraud or insolvency on the part of the grantee² rendering cancellation the appropriate relief.³ Furthermore, where the agreement for support is only a part of the consideration for the conveyance the failure to furnish support does not warrant the setting aside of the conveyance.⁴

However, this is not the rule in other jurisdictions which hold that conveyances of real estate in consideration of agreements to furnish support may be canceled if the grantee in such a conveyance repudiates, or substantially fails to perform, his or her agreement.⁵ The support agreement need not be set out in the conveyance as a condition or covenant, and the grantor need not establish a case for reformation because of mistake.⁶ The remedy of cancellation of the deed and rescission of the contract is not one of absolute right and it is subject to the court's sound discretion to be exercised in accordance with what is reasonable and just under the particular circumstances.⁷ In order to justify cancellation of a deed made in consideration of support of the grantor for life there must be an entire failure or refusal to perform the agreement or at least a substantial failure to perform the contract and such entire or substantial failure or refusal must be in respect to such material matters as would render the performance of the remainder of the agreement a thing different from what was agreed upon.⁸ Cancellation will not be decreed if it would be inequitable to do so.⁹ Additionally, the remedy is exercised sparingly and only when the situation demands as such¹⁰ as rescission and cancellation of a deed is a harsh remedy and is not generally favored by the courts.¹¹

Substantial performance is a viable defense which defeats a grantor's application for rescission.¹²

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Davis v. Davis](#), 135 Ga. 116, 69 S.E. 172 (1910) (action for value of the support may be instituted by grantor); [Lee v. McMorries](#), 107 Miss. 889, 66 So. 278 (1914); [Mills v. Dunk](#), 263 N.C. 742, 140 S.E.2d 358 (1965).
As to a grantor's remedy for money damages, see § 30.
- 2 [Bolton v. Morris](#), 209 Ga. 153, 71 S.E.2d 217 (1952); [Craig v. Beach](#), 303 Ky. 516, 198 S.W.2d 220 (1946).
- 3 [Conley v. Sharpe](#), 58 Cal. App. 2d 145, 136 P.2d 376 (2d Dist. 1943); [Redpath v. Redpath](#), 75 A.D. 95, 77 N.Y.S. 668 (3d Dep't 1902).
- 4 [Dunn v. Ryan](#), 82 N.J. Eq. 356, 88 A. 1025 (Ct. Err. & App. 1913).
- 5 [Almeida v. Almeida](#), 4 Haw. App. 513, 669 P.2d 174 (1983); [Blanchard v. Knights](#), 121 Vt. 29, 146 A.2d 173 (1958); [Cales v. Ford](#), 126 W. Va. 158, 28 S.E.2d 429, 150 A.L.R. 398 (1943).
- 6 [McGillivray v. Peterson](#), 73 S.D. 266, 41 N.W.2d 832 (1950).
- 7 [Richards v. Taylor](#), 926 S.W.2d 569 (Tenn. Ct. App. 1996); [Hesselgrave v. Mott](#), 23 Wash. 2d 270, 160 P.2d 521 (1945).
- 8 [Tate v. Murphy](#), 1949 OK 228, 202 Okla. 671, 217 P.2d 177, 18 A.L.R.2d 892 (1949).
- 9 [Walsh v. Walsh](#), 144 Minn. 182, 174 N.W. 835 (1919).
Similarly, a deed given in exchange of a promise for support cannot be rescinded or reformed if the party seeking the relief has not presented satisfactory proof warranting the relief. [Mullinax v. Mullinax](#), 495 So. 2d 646 (Ala. 1986).
- 10 [Sanders v. Needy](#), 363 S.W.2d 114 (Ky. 1962); [Richards v. Taylor](#), 926 S.W.2d 569 (Tenn. Ct. App. 1996).
- 11 [Rennolds v. Rennolds](#), 312 So. 2d 538 (Fla. Dist. Ct. App. 2d Dist. 1975).
- 12 [Hayden v. Hayden](#), 61 Ill. App. 3d 815, 19 Ill. Dec. 130, 378 N.E.2d 631 (3d Dist. 1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 36

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 36. Application of the remedies of cancellation and rescission

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  19

The theories supporting the cancellation of conveyances for breach of the agreement to support the grantor include the theory that the neglect or refusal of the grantee to comply with his or her contract raises a presumption of fraudulent intent not to comply with it from its inception.¹ Thus, fraud on the part of the grantee in procuring the conveyance is considered.² A failure of consideration,³ accident or mistake,⁴ undue influence,⁵ whether the agreement constitutes an implied trust,⁶ and the hardship of the grantor's situation.⁷

The fact that a part of the consideration for the conveyance is the payment of money does not preclude a cancellation for breach of the grantee's promise of support⁸ although where property is conveyed for a substantial cash consideration together with a promise to support the transferor, and the promise of support is broken, there is only a partial failure of consideration which may be redressed by an action for damages but not by a reconveyance of the property involved.⁹

The grantor may not, extrajudicially, by his or her own act of election, rescind the deed for breach by the grantee but must institute an action for such cancellation and rescission.¹⁰ Thus, the mere breach of the agreement to furnish support does not ipso facto divest the grantee of title.¹¹ Furthermore, after suit has been commenced to set aside a deed because of the grantee's failure to perform the condition of support it is too late for him or her to defeat the relief of cancellation by offering to supply the agreed support.¹²

In granting the relief of cancellation, the courts will impose such terms as are equitable under the circumstances¹³ and may decree an accounting of the equities of the parties.¹⁴ While the grantee, upon cancellation, must restore everything that he or she has received by virtue of the agreement, including the value of the use of the premises enjoyed by him or her,¹⁵ an allowance will be made for the expenditures incurred by him or her for the improvement of the premises conveyed,¹⁶ and for the value of services rendered to the grantor¹⁷ or money paid to him or her,¹⁸ or paid out on his or her behalf pursuant to the contract.¹⁹ When a conveyance is canceled, it is made a nullity as to all who may be parties to the suit in which the cancellation is decreed.²⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Stout v. Wilson, 199 Ark. 1188, 136 S.W.2d 693 (1940).
- 2 Supple v. Supple, 370 So. 2d 834 (Fla. Dist. Ct. App. 3d Dist. 1979); Richards v. Taylor, 926 S.W.2d 569 (Tenn. Ct. App. 1996).
- 3 Dietz v. Dietz, 244 Minn. 330, 70 N.W.2d 281 (1955); Yuhas v. Schmidt, 434 Pa. 447, 258 A.2d 616 (1969).
- 4 Rennolds v. Rennolds, 312 So. 2d 538 (Fla. Dist. Ct. App. 2d Dist. 1975).
- 5 Richards v. Taylor, 926 S.W.2d 569 (Tenn. Ct. App. 1996).
- 6 Grant v. Bell, 26 R.I. 288, 58 A. 951 (1904).
- 7 Ford v. Ford, 71 Ohio App. 396, 26 Ohio Op. 326, 36 Ohio L. Abs. 355, 43 N.E.2d 756 (3d Dist. Marion County 1942).
- 8 Owen v. Owen, 185 Ark. 1069, 51 S.W.2d 524 (1932).
- 9 Bruno v. Bruno, 404 Pa. 502, 172 A.2d 863 (1961).
- 10 Butterhof v. Butterhof, 84 N.J.L. 285, 86 A. 394 (N.J. Ct. Err. & App. 1913).
- 11 Hanover Fire Ins. Co. v. Nash, 67 S.W.2d 452 (Tex. Civ. App. El Paso 1934), writ refused.
- 12 Kramer v. Mericle, 195 Iowa 404, 192 N.W. 257 (1923).
- 13 Caramini v. Tegulias, 121 Conn. 548, 186 A. 482, 112 A.L.R. 666 (1936).
- 14 Dietz v. Dietz, 244 Minn. 330, 70 N.W.2d 281 (1955).
- 15 Norris v. Lilly, 147 Cal. 754, 82 P. 425 (1905).
- 16 Dietz v. Dietz, 244 Minn. 330, 70 N.W.2d 281 (1955).
- 17 Caramini v. Tegulias, 121 Conn. 548, 186 A. 482, 112 A.L.R. 666 (1936).
- 18 Maddox v. Maddox, 135 Ky. 403, 122 S.W. 201 (1909).
- 19 O'Ferrall v. O'Ferrall, 276 Ill. 132, 114 N.E. 561 (1916).
- 20 Cales v. Ford, 126 W. Va. 158, 28 S.E.2d 429, 150 A.L.R. 398 (1943).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 37

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

A. Of Contracting Parties

2. Party to Be Supported

b. Relief in Equity

§ 37. Assignability and bona fide purchasers

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  19

A.L.R. Library

[Knowledge or notice of inadequacy of consideration for conveyance in chain of title as affecting bona fide status of purchaser, 42 A.L.R.2d 1088](#)

In some jurisdictions, the right to sue for the cancellation of a conveyance in consideration of an agreement of the grantee to furnish the grantor with support is personal to the grantor and cannot be commenced and maintained by his or her heirs after his or her death.¹ However, in other jurisdictions, the right survives the grantor's death and may be enforced by his or her heirs or representatives.² Thus, the successors of a grantor may maintain a bill in equity to cancel a deed made in consideration of the grantee's agreement to support the grantor on the ground that the grantor was of unsound mind and mentally incapable of executing a valid deed.³

The courts may set aside conveyances made in consideration of the grantee's undertaking to support the grantor, as against subsequent purchasers or encumbrancers from the grantee with notice of the consideration, even though they were without notice of the grantee's breach of the agreement or of an election by the grantor to rescind the conveyance because of such breach.⁴ However, subsequent purchasers taking without notice may foreclose a grantor's ability to void a deed made in consideration for

a promise of support.⁵ Moreover, subsequent purchasers are bound by the support agreement only to the extent of that specified in the deed at the time when they purchased the property and cannot be bound by any subsequent modifications.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Jeffery v. Patton, 182 Ark. 449, 31 S.W.2d 738 (1930); Whitney v. Combe, 151 Neb. 401, 37 N.W.2d 613 (1949); Farrar v. Young, 158 W. Va. 977, 216 S.E.2d 575 (1975).
- 2 Smith v. Condo, 28 Ill. App. 2d 72, 169 N.E.2d 812 (4th Dist. 1960); Moran v. Beson, 225 Mich. 144, 195 N.W. 688 (1923).
- 3 McAdory v. Jones, 260 Ala. 547, 71 So. 2d 526 (1954).
- 4 Federal Land Bank of St. Louis v. Miller, 184 Ark. 415, 42 S.W.2d 564 (1931).
- 5 McMichael v. Flynn, 686 So. 2d 254 (Ala. Civ. App. 1995).
- 6 Blanchard v. Knights, 121 Vt. 29, 146 A.2d 173 (1958).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons V B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.


V. Remedies

B. Of Third Parties

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  185.1, 186(1)

A.L.R. Library

A.L.R. Index, Support of Persons

West's A.L.R. Digest, [Contracts](#)  185.1, 186(1)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 38

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

V. Remedies

B. Of Third Parties

§ 38. Enforcement of contract by third-party beneficiary

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  185.1

A contract made for the support of a third person is generally enforceable by him or her, even though he or she is not a party to the agreement.¹ Thus, where the consideration for a deed is the agreement by the grantee to furnish a third person with the necessities of life, the court, on the application of such third person, may appoint a receiver to take charge of the land conveyed, to rent it, and to pay from the proceeds a stated amount in fulfillment of the agreement.² However, not all courts agree with this proposition.³

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Priest v. Murphy](#), 103 Ark. 464, 149 S.W. 98 (1912) (deed obligating grantee to care for grantor's children); [Thayer v. Thayer](#), 189 N.C. 502, 127 S.E. 553, 39 A.L.R. 428 (1925).
As to the rules regarding third party beneficiary contracts, see [Am. Jur. 2d, Contracts §§ 425 to 453](#).
- 2 [Mitchell v. Mitchell](#), 231 Ark. 990, 333 S.W.2d 741 (1960) (heirs of grantor).
- 3 [Franklin v. Ford](#), 13 Ga. App. 469, 79 S.E. 366 (1913).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 39

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.


V. Remedies

B. Of Third Parties

§ 39. Recovery by third party furnishing support

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  186(1)

A.L.R. Library

[Right of third person not named in bond or other contract conditioned for support of, or services to, another, to recover thereon, 11 A.L.R.2d 1010](#)

As a general rule, where a third party not named in a contract for the support of another either directly or indirectly furnishes such support, the third party is not entitled to recover against the person obliged to furnish support, on the ground that only a party to a contract or one in privity may enforce it and recover damages for its breach.¹ To entitle a third party who furnishes support to recover from the person contracting to furnish the support there must be a stipulation in the contract for support creating an obligation on the part of the obligor to secure or provide a benefit to any such third party.² Statutory provisions may also affect the application of this rule.³

However, in some cases, persons who were not parties to the contract for support, but who have directly or indirectly furnished such support, have been allowed to recover against the person obliged to furnish support, on the ground that the contract inured to the benefit of such third party.⁴ In some cases, subject to principles of natural justice and equity, subrogation has been awarded.⁵ However, subrogation has been denied where the contract for support was personal to the grantee and did not contemplate or authorize the support of the grantor elsewhere than at the grantee's home and the failure of the grantee to furnish support was not due to the grantee's fault but to the grantor's insanity which required the latter's confinement in an insane asylum.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Case v. Case, 203 N.Y. 263, 96 N.E. 440 \(1911\).](#)
- 2 [State Dept. of Public Welfare v. Schmidt, 255 Wis. 452, 39 N.W.2d 392, 11 A.L.R.2d 1007 \(1949\).](#)
- 3 [Prairie Lakes Health Care System, Inc. v. Wookey, 1998 SD 99, 583 N.W.2d 405 \(S.D. 1998\)](#) (holding hospital could void transfer of real estate from patient and his wife to their adult son based on statute preventing transfer to insider).
- 4 [Riordan v. First Presbyterian Church of Tremont, 3 Misc. 553, 23 N.Y.S. 323 \(City Ct. 1893\), aff'd, 6 Misc. 84, 26 N.Y.S. 38 \(C.P. 1893\).](#)
- 5 [Application of Mach, 71 S.D. 460, 25 N.W.2d 881 \(1947\).](#)
- 6 [Eastern State Hospital v. Goodman, 155 Ky. 628, 160 S.W. 171 \(1913\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons VI Refs.

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

[Topic Summary](#) | [Correlation Table](#)

Research References

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 🔑191, 331.1, 347.1
West's Key Number Digest, Deeds 🔑210
West's Key Number Digest, [Limitation of Actions](#) 🔑46(1)

A.L.R. Library

A.L.R. Index, Support of Persons
West's A.L.R. Digest, [Contracts](#) 🔑331, 347
West's A.L.R. Digest, Deeds 🔑210
West's A.L.R. Digest, Limitation of Actions 🔑46(1)

Trial Strategy

[Defense Against Wife's Action for Support, 17 Am. Jur. Trials 721](#)

Forms

[Am. Jur. Legal Forms 2d § 243:26](#)

[Am. Jur. Pleading and Practice Forms, Support of Persons §§ 2, 5, 19](#)

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 40

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 40. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Limitation of Actions](#)  46(1)

A.L.R. Library

[Statute of limitations applicable in action to enforce, or recover damages for breach of, contract to make a will, 94 A.L.R.2d 810](#)

[When statute of limitations begins to run on contractual obligation to pay for minor's support, 52 A.L.R.2d 1125](#)

Trial Strategy

[Defense Against Wife's Action for Support, 17 Am. Jur. Trials 721](#)

Like other legal matters actions relating to contracts for support are subject to a statute of limitations and where the contract requires the payment of a definite sum at specified intervals, the statute of limitations to enforce such a contract starts to run on each payment as it becomes due.¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

1 [Isaacs v. Deutsch, 80 So. 2d 657, 52 A.L.R.2d 1118 \(Fla. 1955\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 41

American Jurisprudence, Second Edition | May 2021 Update


Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 41. Pleadings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  331.1

West's Key Number Digest, [Deeds](#)  210

Forms

[Am. Jur. Pleading and Practice Forms, Support of Persons § 2](#) (Checklist—Drafting a Complaint, Petition or Declaration in Action on Support Agreement)

[Am. Jur. Pleading and Practice Forms, Support of Persons § 5](#) (Complaint, petition or declaration—Against grantee of property conveyed in consideration for support agreement—Equitable relief and damages)

The pleadings offered in a support of persons matter must sufficiently plead a cause of action regardless of whether the moving party is the grantor or grantee.¹ Furthermore, in construing pleadings in actions for support every reasonable intendment in favor of the sufficiency of the petition should be indulged in.² For example, in a petition for the specific performance of an express oral contract to give realty to another in consideration of the plaintiff's taking care of the owner of such realty, it has been held that the words "take care of" should be given a broad meaning in the absence of a motion to make more definite and certain.³ Additionally, the pleading of damages in an action for breach of contract for support must, of necessity, be general in nature, and if the defendant feels it essential to have the damages particularized he or she can resort to discovery proceedings or obtain the necessary information when the case is pretried.⁴ An allegation in an action to set aside a conveyance of property made in consideration of support that a third person claimed some interest in the property by reason of a contract with the grantee followed by his or her answer that his or her interest was acquired and held honestly and in good faith sufficiently raises the issue of his or her notice of the plaintiff's equities in the property.⁵

Caution:

The practitioner should take care in assuring that jurisdictional prerequisites are adequately addressed in the pleadings. For example, in some jurisdictions where an oral promise is made to pay for services for a lifetime the cause of action may not accrue until the promisor's death and the pursuit of a cause of action prior to that will be deemed premature.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Cushman v. Outwater](#), 121 Vt. 426, 159 A.2d 89 (1960).
As to statements of causes of action, see [Am. Jur. 2d, Pleading §§ 124 to 136](#).
- 2 [Sanderson v. Sanderson](#), 130 Tex. 264, 109 S.W.2d 744 (Comm'n App. 1937).
- 3 [Broz v. Hegwood](#), 349 Mo. 920, 163 S.W.2d 1009 (1942).
- 4 [Lippincott v. Houseberg](#), 19 Pa. D. & C.2d 558, 1960 WL 6090 (C.P. 1960).
- 5 [Gall v. Gall](#), 126 Wis. 390, 105 N.W. 953 (1905).
- 6 [Hatfield v. Hatfield](#), 417 S.W.2d 218 (Ky. 1967).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 42

American Jurisprudence, Second Edition | May 2021 Update


Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 42. Evidence and burden of proof

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  347.1

To entitle the grantor to have a deed set aside for failure of the grantee to furnish the support which was the alleged consideration for the deed, the grantor has the burden of proving by a preponderance of evidence not only that the deed was executed in reliance upon the grantee's promise to provide care and support but also that there has been a failure or refusal to perform on the part of the grantee.¹ Some jurisdictions require a grantor to prove by clear, satisfactory, and convincing evidence that a grantee promised to support him or her.² Similarly, in the case of oral agreements allegedly made between the grantor and grantee, some jurisdictions also require clear and convincing proof of the alleged agreement.³ In some jurisdictions, the evidence of failure of consideration must be clear, cogent, and convincing to justify the setting aside of a deed.⁴

Where actual pecuniary damages are sought by the person to be supported for breach of a contract for support there must be evidence of their existence and extent and some data from which they may be computed and no substantial recovery may be based on mere guesswork or inference.⁵ On the other hand, to entitle a grantee to retain the property conveyed in consideration of his or her undertaking to furnish support to the grantor the burden rests upon such grantee to show full performance of his or her agreement or at least a readiness to perform where the deed is in the nature of an executory contract to convey property.⁶

There is no presumption of undue influence in obtaining a deed in consideration of a condition to support; the burden of proof in such a case is on the party alleging the undue influence to establish it by a fair preponderance of the evidence, and this burden never shifts although where the plaintiff has established, at least circumstantially, a prima facie case of undue influence entitling him or her to relief the proof stops there.⁷ In that instance, the defendant must take up the burden and meet the case by sufficient evidence to weaken the plaintiff's case so that the evidence in the plaintiff's behalf no longer establishes a prima facie case to warrant a decision in their favor.⁸ In an action to cancel a deed made in consideration of the support of the grantor by the grantee on the ground of fraud and undue influence where the grantee occupies a fiduciary relationship or a relationship of trust and confidence with the grantor there is a presumption of undue influence thereby casting the burden of proof upon the grantee to establish that the transaction was fair and just and free from any taint of fraud or undue influence.⁹ Moreover, where there is a

confidential relationship between the parties to a deed conveying property in consideration of support the burden shifts to the grantee to show full performance of the contract.¹⁰

Matters offered in evidence must be relevant to the issues of the case.¹¹ For example, a contemporaneous agreement to provide a home for the grantor on condition that the grantor convey his or her property to the grantee is admissible in an action to cancel a deed on the property even though the grantor did not sign such contemporaneous contract inasmuch as it was not necessary for him or her to do so.¹² In determining the amount of damages for breach of a contract to support a person for life, recognized mortality tables may be introduced in evidence for the consideration of the jury along with other competent evidence to establish the probable length of his or her life.¹³

Caution:

The burden of proof will vary according to the defense or claim which is being asserted. For example, in some jurisdictions if one party is seeking to prove nonperformance—particularly if it is alleged that a promise to perform was made fraudulently—that party's burden may rise above a mere, and customary, preponderance standard.¹⁴

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 Hansen v. Goins, 184 Neb. 765, 172 N.W.2d 98 (1969).
- 2 Herston v. Austin, 603 So. 2d 976 (Ala. 1992).
- 3 Glauert v. Huning, 266 S.W.2d 653 (Mo. 1954).
- 4 Bryant v. Bryant, 239 Ark. 61, 387 S.W.2d 322 (1965).
- 5 Norwood v. Carter, 242 N.C. 152, 87 S.E.2d 2, 50 A.L.R.2d 608 (1955).
- 6 Payne v. Winters, 366 Pa. 299, 77 A.2d 407 (1951).
- 7 Boardman v. Lorentzen, 155 Wis. 566, 145 N.W. 750 (1914).
- 8 Boardman v. Lorentzen, 155 Wis. 566, 145 N.W. 750 (1914).
- 9 McNabb v. Brewster, 75 Idaho 313, 272 P.2d 298 (1954).
- 10 Bruno v. Bruno, 404 Pa. 502, 172 A.2d 863 (1961).
- 11 Wright v. Wright, 114 Iowa 748, 87 N.W. 709 (1901).
- 12 Blankenship v. Chambliss, 296 Ky. 340, 177 S.W.2d 131 (1944).
- 13 Van Sickle v. Keck, 42 N.M. 450, 81 P.2d 707 (1938).
- 14 Hammett v. Cannon, 226 Ark. 300, 289 S.W.2d 683 (1956).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 43

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 43. Evidence and burden of proof—Parol evidence

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#) 347.1

A.L.R. Library

[Parol evidence to show duration of written contract for support or maintenance, 14 A.L.R.2d 897](#)

The courts are generally uniform in permitting an oral agreement for support to be proved for the purpose of granting equitable relief.¹ Parol evidence is admissible to show that the real consideration for the conveyance of property was the oral agreement of the grantee to furnish support to the grantor.² Likewise, parol evidence is admissible to show the practical interpretation of the rights of the parties under a contract for the conveyance of real estate in consideration of support to be furnished where the papers themselves are ambiguous.³ Furthermore, where the amount of support is not fixed in the agreement, the person to be supported may testify as to the amount necessary to support him or her,⁴ as can the person where the place contemplated for support is not embodied in the deed—parol evidence is admissible to show the intention and agreement of the parties.⁵ Thus, parol evidence is admissible to show the intention of the parties as to the duration of a contract for support under the general rule of evidence that where the terms of a contract are susceptible of more than one interpretation, or an ambiguity, whether latent or patent, or the extent and object of the contract cannot be ascertained from the language employed, evidence may be introduced to show what was in the minds of the parties at the time of making the contract.⁶ However, where the language employed has an ordinary meaning or where the meaning is plain and unambiguous when read in connection with other provisions of the instrument parol evidence is not admissible to show the intention of the parties as to the duration of the support promised in the contract.⁷ Thus, parol evidence is not admissible to modify or extend the terms of a deed conveying real property in

consideration of support where the rights of third parties have intervened.⁸ Moreover, for parol evidence to be admissible, it must be clear and convincing and not vague and uncertain.⁹

Caution:

Although parol evidence is admissible in certain circumstances, it may not be used as evidence to contradict a written statement clearly stating the parties' agreement for support.¹⁰ Furthermore, parol evidence will not be permitted where there is a conflict amongst the testimony provided by witnesses to either the agreement or any alleged promises made as part of the agreement to provide support.¹¹

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Dietz v. Dietz](#), 244 Minn. 330, 70 N.W.2d 281 (1955).
- 2 As to the modification of a contract through the use of parol evidence, see [Am. Jur. 2d, Contracts § 513](#).
- 3 [Russell v. Robbins](#), 247 Ill. 510, 93 N.E. 324 (1910).
- 4 [Lamb's Estate v. Morrow](#), 140 Iowa 89, 117 N.W. 1118 (1908).
- 5 [Henderson v. Spratlen](#), 44 Colo. 278, 98 P. 14 (1908).
- 6 [Goodwin v. Goodwin](#), 36 Tenn. App. 630, 260 S.W.2d 186 (1953).
- 7 [Stoffel v. Stoffel](#), 241 Iowa 427, 41 N.W.2d 16, 14 A.L.R.2d 891 (1950).
- 8 [Hutchinson v. Hutchinson](#), 48 Cal. App. 2d 12, 119 P.2d 214 (2d Dist. 1941).
- 9 [Blanchard v. Knights](#), 121 Vt. 29, 146 A.2d 173 (1958).
- 10 [Tolver v. Tolver](#), 585 So. 2d 1 (Ala. 1991).
- 11 [Faulkner v. Walters](#), 661 So. 2d 227 (Ala. 1995).
- 11 [Smith v. Riddlespur](#), 599 So. 2d 616 (Ala. 1992).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 44

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 44. Trial

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Contracts](#)  191

Trial Strategy

[Defense Against Wife's Action for Support, 17 Am. Jur. Trials 721](#)

Forms

[Am. Jur. Legal Forms 2d § 243:26](#) (Recital in deed conveying real property)

[Am. Jur. Pleading and Practice Forms, Support of Persons § 19](#) (Instruction to jury—Right to recover in quantum meruit for services rendered under oral support agreement)

It is for the jury to determine whether or not a contract for support was in fact made and also to determine the terms of the contract.¹ Additionally, it is for the jury to decide, in an action to cancel a deed, whether the evidence was sufficient to establish a failure of consideration where the consideration was a promise to make a good home for the grantor during the grantor's lifetime.² Issues of mental capacity—where cancellation of the deed is sought—as well as questions of undue influence are also for the jury.³ However, equitable issues such as the reformation of a deed are not for the jury.⁴

The jury is instructed by the court and the sufficiency of the instruction is whether or not it commits error in advising the jury of the law.⁵

Practice Tip:

In litigating matters involving support of persons claims, it is important to note that in some jurisdictions, the law on deeds given for promises of lifetime support favors grantors and where discord arises between the parties resulting in a cessation of support by the grantee the grantor is entitled to the benefit of all reasonable doubt.⁶

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Thurston v. Nutter](#), 125 Me. 411, 134 A. 506, 47 A.L.R. 1156 (1926).
Witnesses offered for the purpose of proving an oral contract for support where real estate was to be exchanged for services may speak their own language if, with their background and context, their thoughts and meanings are clear and the contract is adequately and definitely proven on the whole record. [Glauert v. Huning](#), 266 S.W.2d 653 (Mo. 1954).
As to questions submitted to a jury, generally, see [Am. Jur. 2d, Trial §§ 615 to 617](#).
- 2 [Roberts v. Jiles' Ex'x](#), 307 S.W.2d 171 (Ky. 1957).
- 3 [Roberts v. Jiles' Ex'x](#), 307 S.W.2d 171 (Ky. 1957).
- 4 [Roberts v. Jiles' Ex'x](#), 307 S.W.2d 171 (Ky. 1957).
- 5 [Norwood v. Carter](#), 242 N.C. 152, 87 S.E.2d 2, 50 A.L.R.2d 608 (1955).
- 6 [Almeida v. Almeida](#), 4 Haw. App. 513, 669 P.2d 174 (1983) (noting this is especially the case if the grantor is aged); [Frasher v. Frasher](#), 162 W. Va. 338, 249 S.E.2d 513 (1978).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 45

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 45. Verdict and judgment

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds  210

In an action for breach of a contract of support it will be presumed that the jury, although not instructed on the point, based their verdict on the present value of future payments, or if the jury did not do so, that the omission was cured by the trial court's reduction of the amount of the verdict.¹

A judgment for the damages suffered by the grantor for breach of a covenant to furnish support may be enforced as a charge or lien on the rents and profits from the land, or as a charge or lien on the land itself, depending upon the nature of the covenant.² Where the grantor fails to establish his or her allegation that the grantee's unkind treatment has forced him or her to live elsewhere, amounting to a breach of the obligation for support, the decree should be left open so that if, on the basis of an attempt of the parties to live together again in the future, it is made clear that the plaintiff cannot live with the defendant because of the latter's improper treatment—then the court could require the defendant, at his or her own expense, to make other reasonable provisions for plaintiff in congenial surroundings.³

Although as a general rule costs are awarded to the prevailing party in an action for the cancellation of a deed in consideration of support⁴ in proceedings in equity costs may be adjudged according to what the court may deem to be equitable.⁵

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- ¹ [Howard v. Adams](#), 16 Cal. 2d 253, 105 P.2d 971, 130 A.L.R. 1003 (1940).
- ² [Minor v. Minor](#), 232 N.C. 669, 62 S.E.2d 60 (1950).
- ³ [Disenroth v. Jennings](#), 344 Mich. 263, 73 N.W.2d 875 (1955).
- ⁴ [McLean v. Wortman](#), 353 Mich. 458, 91 N.W.2d 811 (1958).

5 [Fisher v. Sellers, 214 Ark. 635, 217 S.W.2d 331 \(1949\).](#)

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons § 46

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

VI. Practice and Procedure

§ 46. New trial; appeal

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Deeds 210

In an action brought to recover damages for breach of an alleged contract of support, a new trial was considered necessary in the interests of justice where the jury had returned a substantial verdict for the plaintiff in spite of the fact that the alleged agreement was characterized by motives of kindness and charity, and it seemed preposterous to regard the relationship between the parties as contractual.¹ A decree in favor of a person who had promised to convey real estate in consideration of support to be furnished to a third person cannot be upheld on the ground that the consideration was inadequate in the absence of a finding that the value of the real estate was so greatly in excess of the value of the support as to raise a presumption that the agreement was entered into fraudulently.²

It is for the trial court to resolve questions of fact, such as the existence of an oral contract for support, and whether or not there was a breach thereof³ and to resolve conflicting testimony as to the terms of a conveyance in consideration of support,⁴ although the appellate court has the right, and even the duty, to look afresh at the evidence and the law applied to it.⁵ However, a trial court's findings on issues of fact are presumed correct and will not be disturbed unless they are clearly erroneous and made without supporting evidence, are manifestly unjust, or against the weight of the evidence.⁶ Furthermore, a reviewing court is not at liberty to assume, even in the absence of an express ruling thereon, that the trial court overlooked a viable issue in the case and it must presume that the trial judge correctly and adequately considered all issues properly presented and that, absent a showing to the contrary, the judgment is complete in every aspect.⁷ Thus, whenever the findings of a trial court are reviewed they are aided by the rules of construction in favor of supporting a judgment where reasonably possible.⁸ Furthermore, a party appealing a trial court's ruling may not raise arguments not raised below.⁹

An appellate court will review a jury verdict in a support of persons matter based on a standard which asks if the verdict was plainly erroneous or manifestly unjust.¹⁰

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

Footnotes

- 1 [Carlson v. Krantz](#), 172 Minn. 242, 214 N.W. 928, 54 A.L.R. 545 (1927).
- 2 [Dingler v. Ritzius](#), 42 Idaho 614, 247 P. 10, 49 A.L.R. 598 (1926).
- 3 [Dietz v. Dietz](#), 244 Minn. 330, 70 N.W.2d 281 (1955).
- 4 [McGillivray v. Peterson](#), 73 S.D. 266, 41 N.W.2d 832 (1950).
- 5 [Little v. Holt](#), 229 Ark. 627, 318 S.W.2d 157 (1958) (noting de novo review by supreme court); [Espevik v. Kaye](#), 277 Ill. App. 3d 689, 214 Ill. Dec. 360, 660 N.E.2d 1309 (2d Dist. 1996).
- 6 [McMichael v. Flynn](#), 686 So. 2d 254 (Ala. Civ. App. 1995); [Little v. Holt](#), 229 Ark. 627, 318 S.W.2d 157 (1958); [Richards v. Taylor](#), 926 S.W.2d 569 (Tenn. Ct. App. 1996).
- 7 [Richards v. Taylor](#), 926 S.W.2d 569 (Tenn. Ct. App. 1996).
- 8 [Cushman v. Outwater](#), 121 Vt. 426, 159 A.2d 89 (1960).
- 9 [Brinkley v. Patton](#), 1944 OK 29, 194 Okla. 244, 149 P.2d 261 (1944).
The failure to raise arguments below will be deemed to be a waiver by the party attempting to assert to the argument on appeal. [Kirkpatrick v. Jones](#), 585 So. 2d 828 (Ala. 1991).
- 10 [Kirkpatrick v. Jones](#), 585 So. 2d 828 (Ala. 1991).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.

73 Am. Jur. 2d Support of Persons Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Support of Persons
Karon J. Powell, J.D.

[Topic Summary](#)

Correlation Table

Support of Persons

2001	2012
1	§ 1
2	§ 2
3	§ 3
4	§ 4
5	§ 5
6	§ 6
7	§ 7
8	§ 8
9	§ 9
10	§ 10
11	§ 11
12	§ 12
13	§ 13
14	§ 14
15	§ 15
16	§ 16
17	§ 17
18	§ 18
19	§ 19
20	§ 20
21	§ 21
22	§ 22
23	§ 23
24	§ 24
25	§ 25
26	§ 26
27	§ 27
28	§ 28
29	§ 29
30	§ 30
31	§ 31
32	§ 32
33	§ 33
34	§ 34
35	§ 35
36	§ 36
37	§ 37
38	§ 38
39	§ 39
40	§ 40

41	§ 41
42	§ 42
43	§ 43
44	§ 44
45	§ 45
46	§ 46

© 2021 Thomson Reuters. 33-34B © 2021 Thomson Reuters/RIA. No Claim to Orig. U.S. Govt. Works. All rights reserved.

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.